

**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

**December 7, 2018 - 9:00 a.m. DELIBERATIONS**  
 49 Donovan Street  
 Concord, New Hampshire

**DAY 5**  
**Morning Session ONLY**

*{Electronically filed with SEC 12-20-18}*

**IN RE: SEC DOCKET NO. 2015-04**  
**Application of Public**  
**Service of New Hampshire**  
**d/b/a Eversource**  
**Energy for Certificate**  
**of Site and Facility**  
**(Deliberations)**

**PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

**Patricia Weathersby**  
*(Presiding Officer)*

Public Member

**David Shulock, Esq.**  
**Dir. Elizabeth Muzzey**  
**Charles Schmidt, Admin.**  
**Dep. Dir. Christopher Way**  
**Dir. Michael Fitzgerald**  
**Susan Duprey, Esq.**

Public Utilities Comm.  
 Div. of Hist. Resources  
 Dept. of Transportation  
 Div. of Economic Dev.  
 Dept. of Env. Services  
 Public Member

**ALSO PRESENT FOR THE SEC:**

**Michael J. Iacopino, Esq.** Counsel for SEC  
**Iryna Dore, Esq.** Counsel for SEC  
*(Brennan, Lenehan, Iacopino & Hickey)*

**Pamela G. Monroe, SEC Administrator**

*(No Appearances Taken)*

**COURT REPORTER: Cynthia Foster, LCR No. 14**

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1           that are cited?

2           MR. IACOPINO: Saf-C 1600 which is the  
3           blasting rules from the Department of Safety  
4           does not have a dispute or enforcement mechanism  
5           listed in those particular rules. That's  
6           generally dealt with by the town Fire Chief and  
7           in some cases where the town does not have a  
8           fire chief or they don't have Fire Department by  
9           the State Fire Marshal. So I have no particular  
10          concern about the condition contained in the MOU  
11          as written.

12          DIR. MUZZEY: Thank you.

13          PRESIDING OFFICER WEATHERSBY: Mr. Schmidt.

14          MR. SCHMIDT: I'm fine with that, thank  
15          you.

16          MR. SHULOCK: I support that  
17          recommendation.

18          MR. FITZGERALD: I would agree.

19          MR. WAY: Agree.

20          MS. DUPREY: Yes.

21          PRESIDING OFFICER WEATHERSBY: Nodding  
22          heads to add that condition to our list should  
23          the Application be approved.

24          Now we'll move on then to orderly

1 development, our next topic. First subcategory  
2 would be tourism. Mr. Way, would you lead us  
3 off, please?

4 MR. WAY: Susan, do you want to give an  
5 overview first of what orderly development is?  
6 Why don't we start with an overview of orderly  
7 development, and then we can launch into  
8 subtopics probably.

9 MS. DUPREY: Okay. So this is the  
10 statutory language regarding the finding that we  
11 have to make on orderly development. It's found  
12 at RSA 162-H:16 IV(b). The site and facility  
13 will not unduly interfere with the orderly  
14 development of the region with due consideration  
15 having been given to the view of municipal and  
16 regional planning commissions and municipal  
17 governing bodies.

18 Then there's the rule, our rule, Site  
19 301.15 which states as follows. In determining  
20 whether a proposed energy facility will unduly  
21 interfere with the orderly development of the  
22 region, the Committee shall consider: (a) The  
23 extent to which the siting, construction and  
24 operation of the proposed facility will affect

1 land use, employment, and the economy of the  
2 region; (b) The provisions of, and financial  
3 assurances for, the proposed decommissioning  
4 plan for the proposed facility, and (c) The  
5 views of municipal and regional planning  
6 commissions and municipal governing bodies  
7 regarding the proposed facility.

8 Then there's also, give me a minute to  
9 scramble around to get it, Site 301.09, and this  
10 rule is the rule that relates to the Application  
11 and what must be filed with respect to it. So  
12 it's the lens to some degree through which, or  
13 the informational lens, if you will, that we  
14 would address this segment of the statute.

15 It says, "Each application shall include  
16 information regarding the effects of the  
17 proposed energy facility on the orderly  
18 development of the region, including the views  
19 of municipal and regional planning commissions  
20 and municipal governing bodies regarding the  
21 proposed facility, if such views have been  
22 excessed in writing, and master plans of the  
23 affected communities and zoning ordinances of  
24 the proposed facility host municipalities and

1 unincorporated places, and the applicant's  
2 estimate of the effects of the construction and  
3 operation of the facility on:

4 (a) Land use in the region including the  
5 following. A description of the prevailing land  
6 uses in the affected communities, and a  
7 description of how the proposed facility is  
8 consistent with such land uses and  
9 identification of how the proposed facility is  
10 inconsistent with such land uses.

11 (b) The economy of the region including an  
12 assessment of the economic effect of the  
13 facility of the affected communities; the  
14 economic effect of the proposed facility on  
15 in-state economic activity during construction  
16 and operation periods; the effect of the  
17 proposed facility on state revenues, state tax  
18 revenues and the tax revenues of the host and  
19 regional communities; the effect of the proposed  
20 facility on real estate values in the affected  
21 communities; the effect of the proposed facility  
22 on tourism and recreation; and the effect of the  
23 proposed facility on community services and  
24 infrastructure.

1           Employment in the region, including an  
2           assessment of the number and types of full-time  
3           equivalent local jobs expected to be created,  
4           preserved or otherwise affected by the  
5           construction of the proposed facility, including  
6           direct construction employment and indirect  
7           employment induced by facility-related wages and  
8           expenditures; and the number and types of  
9           full-time equivalent jobs expected to be  
10          created, preserved, or otherwise affected by the  
11          operation of the proposed facility, including  
12          direct employment by the applicant and indirect  
13          employment induced by facility-related wages and  
14          expenditures."

15           That's it.

16           MR. WAY: Thank you. So the first order of  
17          business today I think is the tourism  
18          discussion, and in that good overview we touched  
19          about some the requirements that touch tourism.  
20          I particularly focus on definition of scenic  
21          resources at 102.45. For scenic resource that  
22          does tie to tourism, particularly in (c) lakes,  
23          ponds, rivers, parks, scenic drives and rides  
24          and other tourism destinations that possess a

1 scenic quality.

2 Then once again, when we look at the  
3 effects on orderly development of the region,  
4 when we're considering the economy of the region  
5 we're asked to consider an assessment of the  
6 effect of the proposed facility on tourism and  
7 recreation. So it's beyond just tourism.  
8 Recreation as well. Yes?

9 MS. DUPREY: Mr. Way, I just wanted to  
10 interrupt for a moment because there were some  
11 stipulations that relate to orderly development  
12 that might be good for us to --

13 MR. WAY: Why don't we start with that.  
14 Right.

15 MS. DUPREY: -- read into the record at the  
16 beginning.

17 They're found in Applicant's Exhibit 184.  
18 These are Stipulated Facts and Requested  
19 Findings of Applicant and Counsel for the  
20 Public. There are just four of them. They're  
21 entitled Orderly Development of the Region, and  
22 they're found at page 5, real page 5 of that  
23 exhibit.

24 Paragraph 32. Construction and operation

1 of the overhead portion of the project will  
2 occur entirely within existing distribution and  
3 transmission rights-of-way.

4 PRESIDING OFFICER WEATHERSBY: Ms. Duprey,  
5 I'm going to ask you to slow down just a little  
6 bit.

7 MS. DUPREY: I'm sorry.

8 COURT REPORTER: Thank you.

9 MS. DUPREY: Construction and operation of  
10 the underground portion of the Project will  
11 occur in locally maintained roads on the former  
12 Getchell property in Durham, now owned by  
13 Eversource, and on private property on the UNH  
14 campus area in Durham, and on the Gundalow  
15 Landing area, Flynn Pit area, the Darius Frink  
16 Farm and the Hannah Lane area in Newington, all  
17 areas where the Project has contracted to  
18 acquire new easements.

19 33. The Project will be located in four  
20 host communities, Madbury, Durham, Newington and  
21 Portsmouth. Neither Madbury nor Portsmouth has  
22 sought to intervene in this docket or submitted  
23 any concerns to the Site Evaluation Committee  
24 about the Project.

1           34. The Applicant has entered into a  
2 Memorandum of Understanding with the Town of  
3 Newington. The Applicant indicates that it is  
4 working with the Town of Durham and the  
5 University of New Hampshire to execute MOUs.  
6 And just as a side bar, we know that those MOUs  
7 have been executed now by UNH and Durham.

8           And 35. The Application anticipates that  
9 it will invest approximately \$84 million in  
10 local and state infrastructure improvements with  
11 approximately 19.1 million spent with local and  
12 state business and labor. Thank you.

13           MR. WAY: No, thank you. So as we go into  
14 the tourism discussion for the Applicant, we  
15 have Mr. Robert Varney who spoke more broadly on  
16 orderly development for the entire topic.  
17 Mr. Robert Varney is with Normandeau Associates,  
18 well-qualified former Regional Administrator of  
19 EPA. Regional planning commissions, I think as  
20 I recall Nashua, I know Nashua and I think Upper  
21 Valley as well. Former Commissioner of  
22 Department of Environmental Services and a  
23 graduate of UNH. So I think he's quite familiar  
24 with the area which as, I will mention later, is

1 I think important to me.

2 Mr. Varney identified, and actually I  
3 should say as he went through his testimony, he  
4 did get backup from Ms. Fraser on the  
5 transportation issues, Dr. Shapiro on the  
6 economy issues, and Mr. Raphael. He did offer  
7 Prefiled and Supplemental Testimony. The bulk  
8 of the information and reports apply to the  
9 Supplemental. So if people want to tee that up,  
10 we'll be looking at some point at Appendix 146  
11 and the report is in Appendix 3.

12 Mr. Varney identified tourist-oriented  
13 sites in the vicinity of the Project. He  
14 reviewed information provided by the New  
15 Hampshire Division of Travel and Tourism which  
16 is the New Hampshire Visitors Guide. Good guide  
17 for people to take a look at if you ever get a  
18 chance. As well as info from regional Chambers  
19 of Commerce, local communities, businesses and  
20 other organizations. I think also, too, he did  
21 a lot of online databases, Trip Advisor, et  
22 cetera.

23 The distance of each Travel & Tourism  
24 attraction was measured from the Project route

1 and potential temporary impacts associated with  
2 construction. And visibility of the Project  
3 from visitor attractions including scenic  
4 resources identified by LandWorks was  
5 considered.

6 He did receive business listings and events  
7 from Newington, and in that response a list of  
8 2018 events that have been approved by the Board  
9 of Selectmen through May or early June, a  
10 substantial list such as road races, church  
11 suppers, talent show, egg hunt, weddings, baby  
12 showers, anniversaries and receptions. Fairly  
13 significant list of attractions.

14 For Durham the town estimated that probably  
15 84 of 194 businesses have a nexus with tourism.  
16 As Mr. Varney said in testimony though that  
17 there wasn't much more information provided than  
18 that so it was hard to really quantify the  
19 impact. They did offer a number of conservation  
20 areas that serve as a draw for tourism and  
21 general recreation as well so once again, think  
22 recreation, not just tourism.

23 Mr. Varney did visit tourist-oriented sites  
24 in the vicinity of the Project. He concluded

1 that over the course of the route that there  
2 really wasn't key tourism destinations but more  
3 in the way of tourist-related activities. And I  
4 think here it's important to say it's not that  
5 there aren't key destinations, like, for  
6 example, Strawberry Banke in Portsmouth or  
7 Seacoast Science Center, but his impact was that  
8 they're not impacted by the expanded activity  
9 within the right-of-way.

10 Now, he did not perform a survey or other  
11 analysis to determine construction impacts on  
12 tourism. I think at this point he went with Ms.  
13 Fraser. He acknowledged the potential impacts  
14 from visual changes and construction activities.  
15 He did consider whether the parking spaces will  
16 be available during construction of the project  
17 for tourists who will visit tourism-oriented  
18 businesses and trails as well as events.

19 He concluded that construction of the  
20 Project will have a temporary impact on UNH  
21 events and athletic facilities, water-based  
22 activities on Great Bay and Little Bay, and I  
23 think included in tourism a couple companies  
24 Portsmouth Harbor Cruises, Gundalow Company.

1 Those were two on the Bay. As well as a  
2 Historic District in Newington and the Crossings  
3 Mall in Newington.

4 He maintains that the impact, however, will  
5 be limited and temporary and will be minimized  
6 through outreach and communication with impacted  
7 parties.

8 So his conclusion was that the Project will  
9 not have an adverse effect on tourism or  
10 regional recreation in the region.

11 Counsel for the Public. Counsel for the  
12 Public did not file Direct Testimony addressing  
13 the Project's impact on tourism. However, in  
14 their brief they acknowledged the Applicant  
15 provided a significant amount of detail about  
16 area businesses and tourist attractions, but  
17 they did suggest that his analysis is more in  
18 the way of personal opinion and conclusions  
19 about impacts and maybe lacking in supporting  
20 analysis such as direct service.

21 Town of Durham. Mr. Selig opines that  
22 based on the topography of Little Bay and his  
23 observations of the shore that the Applicant may  
24 understatement the amount of mattresses that

1 will be installed and consequently  
2 underrepresents their impact on recreation. I  
3 also think it's important to loop back to what  
4 we mentioned earlier about the number of  
5 businesses that he had mentioned that were  
6 impacted by tourism.

7 Regarding individual Intervenors, we heard  
8 from a number of Intervenors who stated the  
9 Project will negatively impact their personal  
10 recreation activities. So in most cases it was  
11 recreation tied directly to bay activities such  
12 as boating, walking, fishing.

13 Conservation Law Foundation states that New  
14 Hampshire has long recognized that land subject  
15 to the ebb and flow of the tide are held in the  
16 public trust and are protected by New  
17 Hampshire's public trust doctrine. This  
18 includes boating, fishing, swimming and  
19 recreation.

20 Durham Historic Association states the  
21 Applicant has not met a burden of proof with  
22 regards to recreational trails, the impact on  
23 recreational trails. The Applicant's consultant  
24 did not assess the many recreational trails

1 which the proposed Project crosses. Three  
2 Historic Districts and several conservation  
3 areas between the Durham/Madbury town line and  
4 the Durham Point Road.

5 Dr. and Ms. Vivian Miller testified the  
6 recreational use of the bay such as kayaking and  
7 fishing would be curtailed or at the very least  
8 impaired if concrete mattresses were to be  
9 installed along the shores of the bay.

10 We also heard from Regis Miller concerning  
11 that tourism of Little Bay will decrease due to  
12 the negative impact the Project will have on  
13 bay.

14 Bear with me here. I think there was also  
15 concern by Mr. Miller about the boating  
16 companies the waters of Little Bay. Gundalow.  
17 And the ongoing boating, fishing and lobstering  
18 by individuals. He's concerned that his  
19 property value will decrease as a result of the  
20 negative impact on Little Bay, unsightly  
21 transmission lines, loss of tourism and loss of  
22 privacy.

23 I think that was pretty much the extent of  
24 what we have. I mean, there's a lot of

1 information in the Supplementary Testimony of  
2 Mr. Varney.

3 My two cents in taking away from this I  
4 found the testimony of Mr. Varney and his  
5 exhibit to be persuasive. As I mentioned with  
6 his qualifications, at least for me in  
7 tourism-related activities, it's really  
8 important that you have someone local that knows  
9 the area, that has some feeling for the impacts.  
10 I was persuaded that he does understand the  
11 area, certainly if nothing else between his  
12 stint as head of DES and even something like  
13 being a graduate of UNH. I think he has an  
14 appreciation of the campus and the activities  
15 and the impacts that it might have. And so for  
16 any of us that have gone to things like  
17 graduation, you understand how critical it is  
18 for traffic flow and parking and I get that  
19 feeling that he understood that as well.

20 When I first looked at the Prefiled  
21 Testimony and I think one of the parties brought  
22 this up. It was a little bit sparse in its  
23 testimony for tourism which discouraged me a  
24 little bit, and then I looked at the

1 Supplementary and I was really pleased to see  
2 that the game was up, and there was a lot of  
3 activities and destinations that were  
4 considered. I think I feel reasonably confident  
5 that parking is not going to be a significant  
6 issue as long as there is some management.

7 With regards to the tourism-related  
8 businesses, the things that I look for is and as  
9 I've done in past cases, if a business says, you  
10 know, if this Project is constructed, then  
11 certain things are going to happen which are  
12 going to affect me as a tourism-related  
13 business, and it may be such things as foot  
14 traffic of customers coming through my door, my  
15 ability to deliver goods and services, any host  
16 of things that may then have an impact on my  
17 business which then causes me to do other things  
18 that curtail operations or reduce employees.

19 So I was really looking to see if there was  
20 any quantification from that. Certainly as I've  
21 seen in past dockets where someone's come and  
22 said here's going to be the actual impact on my  
23 business. So when I'm looking at things like  
24 the Crossings Mall, and we kept trying to say

1 well, what would be the impact, and there  
2 really, there wasn't anything forthcoming.

3 In the Town of Durham when we have a number  
4 of businesses that are going to be impacted, to  
5 what extent, and I'm sure there will be maybe  
6 something, but I don't see anything that is a  
7 deal killer there.

8 Same, the list I looked at Newington as I'm  
9 looking at some of these other things down the  
10 line.

11 So I think the impacts are indeed  
12 temporary. I think with regards to recreation,  
13 you know, I think that will be an issue for some  
14 people. I also look at the fact that we have  
15 ruled earlier that the aesthetics would not have  
16 an unreasonable adverse impact.

17 So I think my two cents is I'm persuaded  
18 that tourism is not going to be unreasonably  
19 impacted and that the impacts would be  
20 temporary. I'll open it up for questions at  
21 that point.

22 PRESIDING OFFICER WEATHERSBY: Comments or  
23 questions concerning tourism or recreation?  
24 Director Muzzey?

1           DIR. MUZZEY: Thank you for that summary.  
2           It was helpful and very thorough. Just two  
3           points that I'd like to make. Regarding the  
4           issue of trails which seem to be a very popular  
5           pastime in this part of the state, I did want to  
6           note that in Mr. Varney's other report in  
7           Exhibit A that focused on review of land use in  
8           local and regional planning which we will get to  
9           shortly, I'm sure, he does have a section  
10          specifically that discusses conservation lands,  
11          open space and trails, and although it's not in  
12          the tourism section of his report there  
13          obviously is overlap in those two areas, and I  
14          found that to be a thorough listing of the  
15          trails in each of the communities in the Project  
16          area including Madbury and Portsmouth.

17          I also wanted to agree with you in regard  
18          to the local expertise that is showcased in this  
19          report, and I also found that very helpful and  
20          reassuring. Earlier in this proceeding I was  
21          critical of the aesthetics report because it  
22          seemed to have more of a focus from some  
23          criteria and parameters that you might use  
24          elsewhere in the country, and I did not find

1           that in this report. It was obviously written  
2           by someone who understood the developmental  
3           patterns in tourism and orderly development,  
4           subjects that we're looking at on the Seacoast  
5           so I agree with you and appreciated it.

6           PRESIDING OFFICER WEATHERSBY: Anyone else  
7           care to comment concerning tourism or  
8           recreation? Mr. Fitzgerald?

9           MR. FITZGERALD: I thank Mr. Way for his  
10          good summary. And it seems to me that the  
11          impacts of this Project are going to be fairly  
12          temporary in terms, in the construction impact.  
13          I would also say that they don't seem to  
14          directly impact businesses in Durham, you know,  
15          it doesn't go through the heart of the business  
16          area in downtown Durham. It does pass through  
17          the campus but along a rail line.

18          So it seems that overall the consideration  
19          of tourism is primarily associated with  
20          aesthetics, and the question to me is will  
21          people not go to tourist locations. Will people  
22          not take a cruise on Little Bay. Will people  
23          not use trails, et cetera, because of the  
24          aesthetic impacts which we've already discussed

1 in great detail.

2 So it seems to me that the impact on  
3 tourism, I didn't see anything in the record  
4 that suggested that there would be a major  
5 impact on tourism.

6 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

7 MS. DUPREY: I would just note that having  
8 been assigned the topic of orderly development  
9 myself, I reviewed much of the same material  
10 that has just been discussed, and I thought it  
11 was a very good and accurate summary of it, and  
12 I think in some cases that there are subjective  
13 judgments that are going to have to be made like  
14 will people still use a trail or not and I think  
15 that those are judgments that are up to us to  
16 make based on information that we've been given.

17 For my part, I believe people will still  
18 use the trails so I did not find as I reviewed  
19 this segment of materials that there would be an  
20 undue impact to the orderly development with  
21 respect to tourism. Thank you.

22 PRESIDING OFFICER WEATHERSBY: Anyone else?  
23 I'd say that I agree with what you all have  
24 said. I think that it's very clear to all of us

1 and to the Applicant that this area is of high  
2 importance for recreation and to some extent  
3 tourism, but the construction impacts are  
4 temporary. There's not going to be any roads  
5 closed, people can still get into businesses.  
6 People can still get to the Bay.

7 And then the permanent impacts of having  
8 the Project erected aboveground and across the  
9 Bay are really aesthetic impacts which we've  
10 already talked about and will not have a  
11 significant negative impact on people using  
12 those resources such as trails or the bay.

13 Just from personal experience I can say  
14 that I frequently kayak in the Piscataqua River  
15 where the overhead lines cross back and forth  
16 between Maine and New Hampshire, and there are  
17 many kayakers, in particular boaters and  
18 fishermen that are going up and down that river  
19 despite the large negative impact, aesthetic  
20 impact of those lines.

21 So I think it goes back a little bit to the  
22 people that are using -- and it does diminish my  
23 experience, I will say, but it goes back to the  
24 fact that people are using that resource for the

1 recreational opportunities and are willing to  
2 perhaps look at a transition pole on the shore  
3 and still use that resource. Ms. Duprey?

4 MS. DUPREY: Madam Chair, your remarks are  
5 really important and also interesting in that  
6 there's this interplay between all of our  
7 standards, but particularly undue interference  
8 in the orderly development and the public  
9 interest standards, and as you were talking  
10 about kayaking near lines, it struck me that  
11 that might be something that we take up in the  
12 public interest segment which is not the same  
13 high level of a standard where here it's undue  
14 interference. That's a pretty tough standard so  
15 pretty high bar so I just wanted to comment on  
16 that. Thank you.

17 PRESIDING OFFICER WEATHERSBY: Anyone else  
18 like to chime in concerning tourism and  
19 recreation? Do we want to do a straw poll then  
20 as to what folks think, whether there's an  
21 unreasonable adverse effect on tourism? And  
22 recreation as a result of this Project?

23 MR. FITZGERALD: No.

24 MS. DUPREY: No.

1 MR. WAY: No.

2 MR. SCHMIDT: No.

3 MR. SHULOCK: No.

4 DIR. MUZZEY: No.

5 PRESIDING OFFICER WEATHERSBY: No.

6 Our next topic, Mr. Way, is employment or  
7 community infrastucture?

8 MR. WAY: Actually, it's employment.

9 PRESIDING OFFICER WEATHERSBY: Employment.

10 MR. WAY: Because I think as we go through  
11 these first rounds you're going to see a lot of  
12 overlap. Employment, we talk about, you know,  
13 is going to tie right back to the businesses  
14 that we discussed with tourism more than likely.

15 As part of our discussion at 301.09, once  
16 again, the effects of orderly development on the  
17 region, we have to discuss employment in the  
18 region which includes an assessment of one, the  
19 number and types of full-time equivalent local  
20 jobs expected to be created, preserved or  
21 otherwise affected by the construction of the  
22 proposed facility including direct construction  
23 employment and indirect employment induced by  
24 facility-related wages and expenditures. And

1 two, the number and types of full-time  
2 equivalent jobs expected to be created preserved  
3 or otherwise affected by the operation of the  
4 proposed facility including direct employment by  
5 the Applicant and indirect employment induced by  
6 facility-related wages and expenditures.

7 To meet the burden of proof that employment  
8 in the region has been studied, the Applicant  
9 offered the Prefiled and Supplemental Testimony  
10 of its expert, Dr. Lisa Shapiro. I would refer  
11 you to Exhibit 9, her Prefiled, and Exhibit 83  
12 which is her Supplemental.

13 I think just so we're all on the same page,  
14 just talk about my understanding of a few terms.  
15 When we talk about direct jobs, I think they're  
16 just that. Jobs immediately employed by the  
17 company or contractors for the purpose of the  
18 Project. Indirect jobs, these result more from  
19 the activities generated by the increase and  
20 those supplying goods and services to the  
21 Project. Induced jobs and this is one where  
22 it's always hard to get a handle on. It's very,  
23 kind of ethereal, but these are the jobs  
24 typically brought about by increased spending

1 from direct and indirect jobs. Rising tide.

2 To make the estimates through modeling, Dr.  
3 Shapiro utilized a standard economic modeling  
4 package called REMI which stands for Regional  
5 Economic Models, Inc., standard package, which  
6 she uses to calculate some of the economic  
7 benefits. I'm somewhat familiar with the  
8 modeling concept based on REMI although I've  
9 worked with others, but I think essentially the  
10 same. Does give some baseline estimates for  
11 employment, and it's based upon what you enter  
12 for sector and wage information, and then it can  
13 offer direct, indirect and induced jobs through  
14 an input/output model.

15 The model itself or at least in this  
16 circumstance doesn't really, as others have  
17 pointed out, doesn't really account for  
18 disruptive circumstances that might affect the  
19 modeling. Things that might cost the model to  
20 go in the other direction brought about by, say,  
21 for example, economic conditions.

22 I think a lot of this came up, if you're  
23 looking for a transcript that it was Day 6 of  
24 the testimony.

1           Now, some of her modeling did account for  
2 positions with higher wages due to the fact  
3 there will likely be specialty work and hazards  
4 that demand a higher rate of pay. So think  
5 lineworkers and I would imagine the hand and jet  
6 plowing. If the construction budget is fixed  
7 which it is at least for the purpose of this,  
8 this could mean an estimate of less workers  
9 coming out of the modeling.

10           So in her Supplemental Testimony providing  
11 estimates through modeling, using an estimate of  
12 a fixed amount of 19.1 million which I think is  
13 a little bit of an increase over the Prefiled  
14 but that was in the Supplemental, and that will  
15 be spent over four years of the project, she  
16 believes that the annual average total number of  
17 New Hampshire jobs during construction is  
18 between 30 and 46 jobs. That's annual average  
19 total number.

20           The peak number of total jobs, which I  
21 think we've identified the peak as being year 3  
22 of four years, the peak number of total jobs in  
23 year 3 is estimated to be between 54 and 97  
24 jobs. These are direct jobs, indirect jobs and

1 induced jobs. This is the whole thing. Of that  
2 amount, Dr. Shapiro estimates that about half of  
3 those jobs are going to be direct.

4 So in case you're interested in a breakdown  
5 by sector, which I always am, Dr. Shapiro  
6 utilizing the REMI model estimates that the  
7 annual average total number of New Hampshire  
8 jobs in the construction industry, all types,  
9 will range from 13 to 24 per year with a peak of  
10 approximately 28 to 58 in year 3. That's,  
11 again, the peak year of construction.

12 The annual average number of New Hampshire  
13 jobs in the professional and technical services  
14 industry will range from 6 to 7 with a peak of  
15 approximately 7 to 9 in year 3. The annual  
16 average total number of New Hampshire jobs in  
17 the retail trade sector will range from 2 to 4  
18 with a peak of approximately 3 to 7 in year 3.  
19 And the annual average total number of New  
20 Hampshire jobs in all other industries involved  
21 with the Project, that could be financing,  
22 retail trade, anything that isn't in the other  
23 bucket, will range from 7 to 10 with a peak of  
24 approximately 13 to 20 jobs in year 3.

1           Now, these are all temporary jobs, you  
2           know, and I'm not particularly bothered by that,  
3           particularly in the construction industry as  
4           I've said in other cases. That is sort of the  
5           nature of the industry in construction, utility  
6           construction. You go from job to job. So I  
7           would never diminish the temporary job for the  
8           utility sector.

9           The Applicant has indicated it will work to  
10          maximize the use of construction-related jobs  
11          for New Hampshire to the extent they're  
12          available. They'll use a Project Labor  
13          Agreement to make every effort to use New  
14          Hampshire-based construction-related work to the  
15          extent they're available. From offered  
16          testimony particularly from the Construction  
17          Panel on day 2, I think or I heard that there's  
18          a reality that there may be a skill set for some  
19          of the activities such as jet plowing that's not  
20          embedded in New Hampshire and will have to come  
21          from elsewhere. Have to imagine that jet  
22          plowing which has not really been done in New  
23          Hampshire, the skill set may not be there.

24          I think the positive side and this is where

1 we go back to tourism type activities is that  
2 you'll see a bump in the retail and hospitality  
3 sectors that's likely to occur.

4 Robert Varney, although he did not address  
5 employment directly, he did talk about some of  
6 the business interactions that were done for  
7 touring companies, food establishments and other  
8 tourism-related businesses, and I thought that  
9 carried some weight. Overall, he did not  
10 receive feedback that suggested or quantified  
11 negative impacts to employment.

12 So I think it's always a discussion. If  
13 you're going to add jobs on one end, at the very  
14 least you have to consider and keep in mind jobs  
15 that might be removed on the other end. Once  
16 again, very in tune to hear from businesses that  
17 their employment is going to be impacted as a  
18 result of the Project and they are possibly  
19 going to layoff employs. While that may not,  
20 that does not negate the modeling, it's  
21 certainly something that we have to keep in  
22 mind.

23 Counsel for the Public states that job  
24 creation is positive but fairly modest for this

1 project, and it lasts only for the construction  
2 period of the project. No long-term jobs are  
3 predicted, and that's pretty much, I think, what  
4 I saw as well is that once this is done, that it  
5 won't be, jobs will not be carried on.

6 In addition, to the extent Dr. Shapiro's  
7 inputs to the REMI model exaggerate the net  
8 economic impact from the Project, the job  
9 estimates will overestimate actual job creation.  
10 That's from the Counsel for the Public saying  
11 that it was a little bit over, it's a little bit  
12 exaggerated which would cause all the findings  
13 to be somewhat exaggerated.

14 I'm not sure I really was persuaded that  
15 that was the case for the REMI model.

16 So I mean, obviously, we're going to be  
17 having job creation. We're going to be having a  
18 set amount that will be created over the four  
19 years of the Project. Once again, the peak year  
20 will be in year 3. These are primarily  
21 construction-related jobs. While they're  
22 temporary, they will certainly be a benefit to a  
23 sector. So when I look at the employment  
24 assessment, I think they did a reasonable job.

1 I think the modeling is sound, and I think that  
2 they've demonstrated that at the very least I  
3 don't think there will be an adverse impact on  
4 employment in the state. I think there will be  
5 a benefit, albeit not a huge one. And with that  
6 I'm going to open it up.

7 PRESIDING OFFICER WEATHERSBY: Thank you,  
8 Mr. Way. Would anyone care to comment  
9 concerning jobs and employment? Ms. Duprey?

10 MS. DUPREY: Just as an overview statement.  
11 I think for this particular segment of the  
12 testing that we do as opposed to the public  
13 interest segment where the standard is undue  
14 interference with the orderly development of the  
15 region, I didn't find any negative information  
16 in the record which I think would have been  
17 necessary to go to this standard, and while I  
18 would agree that I don't believe the employment  
19 numbers are robust, there is a positive uptick,  
20 but, again, looking at the standards I didn't  
21 see any negative. Thank you.

22 PRESIDING OFFICER WEATHERSBY: Mr. Way?

23 MR. WAY: One other thing I wanted to  
24 mention, too, is that, and it's hard to

1 quantify, but obviously if we're talking about  
2 adding reliability to a region and that  
3 reliability hopefully will translate to some  
4 long-term economic growth, I see the seacoast is  
5 an economic engine in a lot of ways. It may not  
6 be at the huge level, but it certainly is  
7 attractive. It's a recruitment area for sure,  
8 and I think having that, having that reliability  
9 in that area for manufacturers, others that may  
10 want that assurance I think is attractive, and  
11 those that come and create jobs. Is it  
12 something that you can quantify right now? I  
13 don't think it is. But I think we always have  
14 to keep our eye on the ball about what we're  
15 trying to do here and what the benefit is going  
16 to be to the region.

17 PRESIDING OFFICER WEATHERSBY: Just  
18 following up, this isn't a jobs project. It's a  
19 Reliability Project.

20 MR. WAY: Right.

21 PRESIDING OFFICER WEATHERSBY: We do need  
22 to bear that in mind. In my mind it's very  
23 different than a merchant project where the  
24 number of jobs created would have more bearing.

1 Mr. Fitzgerald?

2 MR. FITZGERALD: I just wanted to recall.  
3 I believe there was testimony from Dr. Shapiro  
4 that there was, the REMI model that she used did  
5 not indicate any negative impacts, but then they  
6 went on, and I'm not sure if anyone else  
7 remembers or not, but I believe, my notes  
8 indicate that she said that was because there  
9 were no negative data put into the model, if I  
10 recall. I just, is that, was that because there  
11 wasn't any negative data?

12 MR. WAY: Well, if I might, I think that  
13 was one concern. I think Counsel for the Public  
14 brought up that issue that it didn't really  
15 account for disruptive information, and I think  
16 the hard part is that REMI is pretty much  
17 forward thinking. It's linear. And I think  
18 it's difficult to interpret what that disruptive  
19 influence might be. So I think that the value  
20 in the limitation of the model is it basically  
21 says here are the types of jobs you can expect.  
22 But in terms of things like induced jobs or  
23 indirect jobs, if there's other things out there  
24 that might cause it to go the other way, that's

1 not what this does. That's not the purpose of  
2 it. So I think --

3 MR. SHULOCK: I'd like to stop and make a  
4 correction now before you go on. The REMI model  
5 does accept negative inputs.

6 MR. WAY: But you've got to know what it  
7 is.

8 MR. SHULOCK: Right. So Dr. Shapiro stated  
9 that she reviewed the testimony of all the other  
10 witnesses, that no negative affects were really  
11 identified from this Project that could be put  
12 into the model. One effect that might have been  
13 put into the model was the increase in electric  
14 transmission rates on your bill but those had  
15 been quantified to some extent, you know,  
16 assuming that all of the costs of the  
17 construction would be regionalized and we as a  
18 state or PSNH bore nine percent of that cost.  
19 The impact on an average customer's bill would  
20 be about a dollar per year which is really de  
21 minimis and doesn't really value putting into  
22 the model because it would really have no  
23 effect. It's meaningless within that model. So  
24 she did review the testimony for negative

1 inputs. There just weren't any to put in.

2 MR. WAY: And I think it's hard to, there  
3 are some things where you can work with like  
4 that, but a lot of the other possible  
5 disruptions and negative influences, it's hard  
6 to quantify. The thing with this model is it's  
7 only as good as what she put in.

8 MR. SHULOCK: Exactly.

9 MR. FITZGERALD: That clarifies the issue  
10 for me.

11 DIR. MUZZEY: And thinking of those  
12 possible negative ramifications that can't be  
13 predicted at this point, when we were talking  
14 about that topic and sort of following that out  
15 into the future, we then talked about the  
16 dispute regulation process that's been put into  
17 this Project so if a business did feel it had  
18 adverse economic impacts from the Project the  
19 business would have that available to it in  
20 order to seek some sort of compensation.

21 PRESIDING OFFICER WEATHERSBY: Any other  
22 comments or concerns regarding employment?  
23 We'll poll everyone then as to whether you  
24 believe they'll be an undue interference. Ms.

1 Duprey?

2 MS. DUPREY: No.

3 PRESIDING OFFICER WEATHERSBY: Whether it  
4 be an undue interference with the employment in  
5 the region. Mr. Fitzgerald?

6 MR. FITZGERALD: No.

7 MS. DUPREY: No.

8 MR. WAY: No.

9 MR. SCHMIDT: No.

10 MR. SHULOCK: No.

11 DIR. MUZZEY: No.

12 PRESIDING OFFICER WEATHERSBY: No. Our  
13 next topic, Mr. Way?

14 MR. WAY: I don't know if we want to  
15 mention this now. Because as I said earlier,  
16 you start to see a lot of overlap here in  
17 different topics so we started off with tourism  
18 and tourism-related businesses, and then we  
19 launch into employment, but I think it's also  
20 important to note that as we look at some of the  
21 business interests that may not necessarily fall  
22 into tourism, but they certainly have weight  
23 nonetheless, and I don't really have anything  
24 that's formally prepared, but I would bring up

1 the businesses that may have registered some  
2 concern. And the Heald McCosker testimony with  
3 regard to gardening and the right-of-way. I  
4 thought also, too, Mr. Baker with Fat Dog, I  
5 found him to be a very persuasive witness. And  
6 those were primarily the two operations that I  
7 saw coming before us to say that their business  
8 operations could be seriously curtailed. I  
9 think the one where the most concern, Ms. Heald  
10 who has a gardening business directly in the  
11 right-of-way is seeing that they'll be an impact  
12 on her operations. I think the Applicant has  
13 certainly made every effort to work with her. I  
14 think they're trying to come out obviously with  
15 an agreement. As a matter of fact, I was  
16 looking at the Applicant's exhibit, the letter,  
17 Exhibit 229 to Ms. Heald McCosker, too, that  
18 highlights some of the things that they've  
19 suggested, and I know that there's been quite a  
20 bit of back and forth. And I wanted to make  
21 sure that we gave her her due and had that  
22 discussion if there was anything more that we  
23 thought we needed to do in that situation.

24 Now, it's a challenge because her business

1 is in the right-of-way, solidly in the  
2 right-of-way, and that means that for  
3 construction to happen, plants are going to have  
4 to move. And I think it all comes back to, as I  
5 think, Director Muzzey, as you said that Dispute  
6 Resolution Process, and when we get to that,  
7 making sure that that Dispute Resolution Process  
8 is responsive and nimble, not overly burdensome  
9 because we know that there's probably going to  
10 be a few impacts in certain areas like Ms. Heald  
11 McCosker's property. So, and I don't think,  
12 correct me if I'm wrong anybody, but I don't  
13 think there was a joint use agreement there in  
14 that instance. So I do think we want to be  
15 sensitive to that issue.

16 With regards to Fat Dog, he did bring up  
17 some pretty good concerns. As a matter of fact,  
18 I thought he did a good job in starting to  
19 quantify and to evaluate what his impacts could  
20 be. Once again, the Dispute Resolution Process  
21 is there. However, in that, that's one case  
22 where as much as we can do to maybe mitigate it  
23 before it happens and which, and I feel  
24 relatively good that it won't be impacted, it's

1 outside of the mixing zone, and I think the  
2 shellfish program has paid a lot of attention to  
3 it, but once again, I think it rises to the  
4 level where we have to at least make sure that  
5 we certainly give Mr. Baker his listen and due.

6 With regards to other types of businesses  
7 that will be impacted, like once again, I didn't  
8 hear anything from the mall, not surprised on  
9 that. I didn't hear anything from other types  
10 of businesses that said, you know, hey, wait, if  
11 this happens, bad things will occur. I didn't  
12 hear that. The impacts would be temporary. So  
13 I just offer that up as something if we want to  
14 discuss it or any other comments.

15 PRESIDING OFFICER WEATHERSBY: I think it  
16 would be helpful to go through those two  
17 businesses in particular with a little more  
18 detail and decide. I mean the Applicant has  
19 made great efforts to work those two business  
20 owners to try to accommodate their businesses  
21 and personal needs, but I think if we take a  
22 little look at them in a little more detail and  
23 see if there's anything else that we can think  
24 of, and I also think at some point we should go

1 through that Dispute Resolution Process and see  
2 if it's adequate, but I think before we do that  
3 I'd like to have us make sure we understand the  
4 impacts to businesses and property values before  
5 we, we understand the problem before we work on  
6 the solution. Mr. Fitzgerald?

7 MR. FITZGERALD: So with regards to those  
8 two businesses, Ms. McCosker, I have a great  
9 deal of empathy for her concerns and distress  
10 over the impacts of this Project. However, you  
11 know, she indicated that she purchased that  
12 property back in the 1970s. There was a utility  
13 easement on it at the time, and I sort of put  
14 that under buyer beware as, you know, prior, had  
15 been prior transmission lines and existing  
16 transmission lines and -- distribution. I'm  
17 sorry. Yes. I'm somewhat empathetic also, we  
18 had several people, one other couple who  
19 indicated that when they purchased their  
20 property they had been told that, you know,  
21 certain representations had been made to them,  
22 but I don't think those representations were  
23 ever official positions of the Applicant who had  
24 the conservation easement. I don't think they

1           ever stated anywhere that they would not use  
2           this line again, and to me those were mostly  
3           anecdotal.

4           So again, while I'm feeling somewhat  
5           sympathetic, I think it's a -- and Ms. McCosker  
6           chose to develop her business knowing this was  
7           on an utility easement and not even thinking to  
8           obtain a Joint Use Agreement that would, that  
9           may have protected her in certain issues and  
10          certain instances, but I do think, you know, the  
11          Dispute Resolution Process needs to be looked at  
12          carefully to ensure that if her business is  
13          impacted that there is a way for her to be  
14          appropriately compensated. And I think one  
15          thing that needs to be considered is that she  
16          sort of indicated her business was in a  
17          transition now and I don't know exactly how the  
18          way she put it, but she almost implied that she  
19          was moving into a semi-retirement phase where  
20          the business, it would be a different business  
21          model, and I think she was greatly concerned  
22          because her model was going to be more, you  
23          know, less the active gardening and going out  
24          and working for people and so on and more the

1 sale of plants and flowers. So I think that's  
2 something that we need to keep in mind.

3 With regards to Mr. Baker, I, too, found  
4 him compelling and the one thing that I think we  
5 really need to consider is his concern that even  
6 though he might lose certain business and be  
7 compensated for that, he stood to potentially  
8 lose customers who when you are a supplier to a  
9 customer, particularly, again, he was  
10 transitioning his business into a different  
11 business model, and when you lose restaurants  
12 because you can't supply them when they need  
13 them and somebody else can, and the transitory  
14 nature, I think he described it as the shiny  
15 apple or whatever, the shiny new oyster. So I  
16 think there are some concerns with both of those  
17 businesses that we need to just make sure that  
18 we're taking a careful look at.

19 PRESIDING OFFICER WEATHERSBY: Mr. Way?

20 MR. WAY: So I was looking at Ms. Heald's  
21 testimony, and it was July 20th, 2018. The  
22 letter I mentioned earlier, 229, Exhibit 229,  
23 came out August 3rd of 2018. I think some of  
24 the concerns that Ms. Heald specifically has,

1 the well, position of her well, maybe digging of  
2 a new well, she did say, she did make a request  
3 for compensation for use of her property. And I  
4 think the idea being that this would impact  
5 beyond the right-of-way into her nonright-of-way  
6 type activities. So she was looking for some  
7 sort of compensation concern.

8 Obviously, she can't be there full-time to,  
9 you know, to advise or she maintains she can't  
10 advise full-time during the construction of the  
11 project because part of her gardening business  
12 is working with other gardeners and other  
13 vocations so she's going to be off doing that.  
14 So then I think there's obviously concern about  
15 the movement of her other inventory.

16 Looking at the Eversource letter on 229  
17 you're going to see there was a discussion or  
18 offer to purchase property, plans on how they're  
19 going to do the communication. I think there  
20 was discussions about relocating the structure,  
21 but there's only so much that they can do in  
22 that respect. I think that's already been  
23 addressed. They talk about a planting  
24 mitigation plan, direct accommodation and

1 restoration plan for her gardening business.  
2 They would help with the inventory of her plant  
3 stock, develop a relocation plan for the plant  
4 stock and actually relocate the plant stock.

5 PRESIDING OFFICER WEATHERSBY: Mr. Way, I'm  
6 just going to pause you just for a second. I  
7 think it might be helpful if everybody goes to  
8 Exhibit 229 and kind of follow along?

9 MR. WAY: Thank you, Dawn.

10 PRESIDING OFFICER WEATHERSBY: So we'll go  
11 through issue by issue.

12 MR. WAY: You'll see on the first page --

13 MS. DUPREY: Excuse me. Can I just ask a  
14 procedural question here? Because I'm not  
15 exactly sure where we're going or what we're  
16 trying to do or whether this is the right  
17 category to be doing it in. So the standard for  
18 this segment is regional. So that, it just  
19 concerned me that we're getting down to the  
20 granular level of a particular business for a  
21 couple of reasons. One. Because I don't feel  
22 like it fits within the standard of regional.  
23 And two, because if we're going to try to remedy  
24 a particular business, then I think we ought to

1 be looking at the dispute resolution procedure  
2 and saying whether we feel like that fails this  
3 particular business. If we think the Dispute  
4 Resolution Process that's been developed between  
5 Counsel for the Public and the Applicant is  
6 sufficient, I'm not sure why we're going through  
7 the specifics of any one business, particularly  
8 under the standard which is regional, and I'm a  
9 little mixed up as to what exactly we're trying  
10 to do. Thank you.

11 PRESIDING OFFICER WEATHERSBY: Mr. Way?

12 MR. WAY: I admit it's a little bit of a  
13 segue here away from regional, but it seemed to  
14 make sense, at least to me, as we're talking  
15 about businesses and the business impacts were  
16 so limited as to ones that came to our  
17 attention. I agree with the Dispute Resolution  
18 Process that if you have a good Dispute  
19 Resolution Process and we agree with it that  
20 takes care of, I think, most of the issues. We  
21 don't have to talk about this now, but I do  
22 think it's important. We have two businesses in  
23 particular, just two, that rose to our attention  
24 that may require something a little bit more

1 than a dispute resolution or may not, but once  
2 again, I think we want to give them some degree  
3 of attention.

4 I'm fine if we don't do it now. We can  
5 certainly say let's put this in the parking lot,  
6 and we can address it later. But as we look at  
7 tourism to employment to businesses, you know,  
8 and certainly that will dovetail with Mr.  
9 Shulock's as he goes over the economy of the  
10 region, we can talk about it more then. But I  
11 think at some point we just want to give it a  
12 little bit more discussion than simply to say  
13 that dispute resolution, I know that's not what  
14 you're saying, that dispute resolution will take  
15 care of it.

16 MS. DUPREY: I think what I'm saying is in  
17 this case there were two people. In another  
18 case there could be 25 people. And I'm just not  
19 certain -- so one, I'm looking forward here and  
20 trying to understand what it is specifically  
21 that we're supposed to be trying to do, and  
22 whether we are supposed to be on this Committee  
23 trying to make a determination business by  
24 business about what sort of compensation they

1           should have and where in the statute we would be  
2           doing that work.

3           So I'm perfectly willing to do it. I'd  
4           just like to understand what the parameters are  
5           in the statute or the rule that would cause you  
6           to do this. Again, more with the forward look  
7           than here. I mean, you know, there are two  
8           here, but in another case there could be a lot  
9           more and that's just my question.

10          MR. WAY: And I think you're right, we're  
11          trying to take a regional approach here so it's  
12          the impacts to any one business is not, maybe is  
13          not as critical as the whole once we can  
14          identify the region. But what I'm saying is  
15          that there's something that we can do or if not  
16          that's fine, but at the very least, acknowledge  
17          that we have a couple businesses that are  
18          Intervenors, and by the fact that they're  
19          Intervenors, I think that rises to a different  
20          level. Once again, I'm comfortable to put it  
21          off, talk about it with Mr. Shulock's area if we  
22          want to talk about it at all.

23          PRESIDING OFFICER WEATHERSBY: I think it  
24          is important to talk about. Our approval or

1 disapproval of the Project itself is based on a  
2 regional analysis, but when you talk about  
3 employment, economics, there are certain  
4 businesses that are uniquely affected. In this  
5 Project, it's the oyster farms and Ms. Heald's  
6 property. In Northern Pass, for example, what  
7 comes immediately to mind were the downtown  
8 Plymouth businesses. So when there's certain,  
9 when certain businesses are affected differently  
10 than others along a Project route or Project  
11 area, I think that they should be talked about,  
12 and particularly in this case where the two that  
13 we're about to discuss, I think, are  
14 Intervenors, have participated in this process,  
15 and the Applicant has worked hard to develop  
16 mitigation plans for them which I think we  
17 should review and decide as to whether we are  
18 going to require Eversource to comply with the  
19 offers that they've made. So I certainly would  
20 be much more comfortable addressing these two  
21 businesses. Whether we do it here or later,  
22 I'll defer to the Committee, but my personal  
23 opinion is that these businesses are rather  
24 uniquely affected by this Project and even

1           though our overall analysis is a regional  
2           analysis that these businesses deserve a closer  
3           look.

4           MS. DUPREY: I'd just like to put on the  
5           record my disagreement with that position. I  
6           don't think that the purpose of the SEC in  
7           reviewing these types of cases is to get to that  
8           granular level. I applaud CFP and the Applicant  
9           for coming up with a dispute resolution  
10          procedure which I think is the appropriate  
11          venue. I feel like if we do this, we're  
12          basically saying to the public intervene in  
13          these cases and we're going to take care of your  
14          problem, and I don't think that's what the  
15          statute intended nor is it what I feel like we  
16          should be spending our time doing. Particularly  
17          whereas here the level of outreach that was  
18          engaged in by the Applicant I think was really  
19          exemplary, and when you look through all those  
20          letters the effort that they made to try to  
21          solve these problems, and we're sort of stepping  
22          over that.

23          I would say that the situation with the  
24          town of Plymouth, I didn't sit on that case or

1 the city of Plymouth, I'm not sure, I think it's  
2 a city, where you said the downtown businesses.  
3 That's different to me. That's a little more  
4 regional. It's a group. It's not a singular  
5 business, and it just, you know, for whatever  
6 it's worth it just makes me uncomfortable to  
7 watch us get to that particular case level, not  
8 because I feel like folks aren't entitled to  
9 redress for these situations, you know, and I  
10 would like to see that, but because I feel like  
11 there's been a process that's been put forward  
12 and I think that's what should be used. Thank  
13 you.

14 PRESIDING OFFICER WEATHERSBY: Okay. Why  
15 don't we think about that. Let's take a  
16 ten-minute break, we'll come back and we'll  
17 resume.

18 MS. DUPREY: Just before we take a break,  
19 just so I can be ready next, originally I was  
20 going to talk about construction, but given the  
21 sorts of discussions that we're having now and  
22 your stated desire earlier to take up the  
23 Dispute Resolution Process later, I think it  
24 would be a mistake to address construction

1 without addressing the Dispute Resolution  
2 Process. So do you want me to put that towards  
3 the end? How would you like me to proceed after  
4 our break? Or do you want to think about it.

5 PRESIDING OFFICER WEATHERSBY: Let me think  
6 about that.

7 MS. DUPREY: All right. Thanks.

8 (Recess taken 10:17 - 10:34 a.m.)

9 PRESIDING OFFICER WEATHERSBY: We will  
10 resume our deliberations concerning affected  
11 businesses. Mr. Way?

12 MR. WAY: I just want to follow up so we  
13 don't leave something hanging from the last  
14 discussion. And when I brought up the two  
15 businesses, as we talked about, I think it is a  
16 good segue into the Dispute Resolution Process.  
17 It's not my intent to get and micromanage  
18 agreements that may be in place with businesses,  
19 and frankly, in terms of a spoiler alert here, I  
20 think the Dispute Resolution Process in my mind  
21 and combined with the efforts of the Applicant  
22 probably will suffice at least in the Ms. Heald  
23 case, but I do think it's worth a discussion  
24 because they are, they are two out of all that

1 sort of had some unique concerns and impacts as  
2 it's come to us in this hearing. So using them  
3 in the discussion of a dispute resolution, I  
4 think, Susan, you're prepared to talk about  
5 that, but I think that's my intent is that we  
6 have a couple Intervenors that have unique  
7 issues with their business operations and it  
8 will be good to see how they fit into this  
9 Dispute Resolution Process that's frankly going  
10 to apply to the entire region.

11 So I think to your point, and I actually, I  
12 very much agree that we want, we're trying to  
13 look at the impacts to the region, and I think  
14 that's where we're all, I think we're kind of  
15 getting to the same place, but where we're  
16 trying to look at the impacts to the region, but  
17 here's a couple examples that we should  
18 consider.

19 PRESIDING OFFICER WEATHERSBY: I think  
20 that's a great approach. Let's talk about  
21 dispute resolution now rather than later as I  
22 first suggested, and then kind of test the model  
23 a little bit. So Ms. Duprey, could you talk a  
24 little bit about the Dispute Resolution Process

1 that's been proposed?

2 MS. DUPREY: Yes, I can. There are two  
3 segments to the process. Actually, there are a  
4 number of steps, but it's found in two places.  
5 The first place where it's found is in  
6 Applicant's Exhibit 193. Those are the  
7 conditions that have been stipulated as proposed  
8 between the Applicant and the Counsel for the  
9 Public. And if you turn to page 3 of the  
10 document itself, starting with paragraph 17, the  
11 mitigation and Dispute Resolution Process is  
12 begun there.

13 Now, I do want to note that with respect  
14 to, and we'll go to it in a minute, Applicant's  
15 Exhibit 268 which is the Dispute Resolution  
16 Process that would begin to be referred to,  
17 these steps that are set forth here in the  
18 proposed conditions must be taken before going  
19 into the Dispute Resolution Process. So I just  
20 want folks to understand that you don't just  
21 jump into the Dispute Resolution Process. That  
22 these proposed stipulations are a part of that.

23 So at the beginning at paragraph 17 the  
24 Applicants agree that they're going to publicize

1 on their website through its Project outreach  
2 communications contact information for everybody  
3 about the potential contact information for  
4 business and property owners concerned about the  
5 potential impacts of construction or operation  
6 of the Project on their business or property to  
7 communicate their concerns.

8 And then within ten calendar days of  
9 contact by a business or property owner, the  
10 Applicant shall initiate direct discussions with  
11 said business or property owners to identify and  
12 implement appropriate strategies to avoid or  
13 mitigate potential Project impacts on a  
14 case-by-case basis.

15 So what we're starting with here is you  
16 feel that you have had a problem come up, you go  
17 to the Applicant's website, you tell them you're  
18 having a problem, and within ten calendar days  
19 the Applicant is going to initiate discussions  
20 with you. That's step number 1.

21 Step number 2. If you're unsatisfied with  
22 the outcome of that discussion, you may request  
23 an executive review, including an investigation  
24 and determination through the Eversource

1 customer resolution process independent of the  
2 Project team. That's called an executive  
3 review. This review will be initiated within  
4 ten days of the request and shall be completed  
5 no later than 30 calendar days thereafter.

6 So starting with step 1, ten days. After  
7 you file a complaint with Eversource they have  
8 to contact you and start discussions. If you're  
9 unsatisfied with that, you have the right to ask  
10 for an executive review, and that review will be  
11 initiated within ten days of receipt of your  
12 dissatisfactory complaint, and it has to be  
13 completed no later than 30 days. So that so far  
14 is feeling fairly expeditious, to me anyway.

15 Then there's 19. If you're still  
16 unsatisfied, with those first two steps that the  
17 Applicant agrees to participate in nonbinding  
18 mediation with any such business or property  
19 owner, and an independent mediator shall be  
20 selected among the list of New Hampshire  
21 Superior Court Neutrals found at a website  
22 that's listed there.

23 I don't know how a mediator is selected.  
24 There's no timing set forth here. Although I

1 would say that this does seem to be in the hands  
2 of the person who is unhappy with where things  
3 went so they're going to get the ball rolling so  
4 I'm not as concerned about the timing.

5 Then, in step 20, if a concern remains  
6 unresolved following mediation, a business or  
7 property owner can elect to have the dispute  
8 resolved through the Dispute Resolution Process  
9 that is described below which I'm not going to  
10 read because it actually has been put into  
11 place. Going to the Dispute Resolution Process  
12 is not mandatory. But if you do go to it, then  
13 you have waived your right to go to court to  
14 resolve the issues and that will become the  
15 exclusive forum for deciding issues.

16 So when you get to this step after the  
17 mediation, you have the right to go to court if  
18 you're unhappy with where everything is or you  
19 can go through the Dispute Resolution Process  
20 which means you abandon your right to go to  
21 court.

22 Now, meanwhile, I think it's fair to say  
23 and Attorney Iacopino, you can correct me if I'm  
24 wrong, no one has to go through this process.

1 You can go right to the court; is that correct?

2 MR. IACOPINO: That is my understanding.

3 Yes.

4 MS. DUPREY: Well, I don't see how they  
5 could make it any other way because they don't  
6 have any authority to make any rulings over  
7 third parties that aren't not part of this so  
8 I'm going to go with they can go to court.

9 MR. IACOPINO: Nor do we.

10 MS. DUPREY: Exactly. So this process is  
11 being set up in an effort to provide some direct  
12 contact between the property and business owners  
13 and Eversource to try to resolve this. Failing  
14 that resolution, you can go to a normal  
15 mediation process, and if you're still  
16 unsatisfied with the mediation process you've  
17 got two venues. You can either go to court and  
18 continue to pursue your claim or you can go to  
19 the Dispute Resolution Process which we're going  
20 to talk about next.

21 I do want to alert you to the fact that  
22 under this process if we adopt it through these  
23 conditions it says that the SEC shall appoint an  
24 attorney or retired judge who shall

1 independently administer the Dispute Resolution  
2 Process. And there's a mechanism for funding it  
3 initially with \$100,000 to establish the Dispute  
4 Resolution Fund, and thereafter the Applicant  
5 shall deposit any additional funds that are  
6 necessary to pay awards made by the Dispute  
7 Resolution Administrator and to pay the Dispute  
8 Resolution Administrator's compensation and  
9 expenses.

10 MR. WAY: Question?

11 MS. DUPREY: Yes.

12 MR. WAY: Just to be clear, when we look at  
13 the Dispute Resolution Process and they refer to  
14 Administrator, they're referring to that retired  
15 judge SEC-chosen entity, correct?

16 MS. DUPREY: Correct. It's a defined term  
17 in paragraph 21.

18 MR. WAY: Thank you.

19 MS. DUPREY: Yes. So do we feel like we  
20 have a handle on it so far?

21 DIR. MUZZEY: One thing I would just add to  
22 that very thorough explanation is under item 17,  
23 one thing that's reassuring to me is that this  
24 is not something, this is not a process that

1 occurs once some sort of negative impact has  
2 already happened. Property owners, business  
3 owners, can approach the Applicant with concerns  
4 about potential impacts, and then they are able  
5 to talk about those with the Applicant and  
6 hopefully stop the negative impact from  
7 happening in the first place which is a far  
8 better way probably for the business and  
9 property owners to go through this construction  
10 and operation of this facility.

11 The other thing that I find advantageous  
12 about 17 is that within ten calendar days of  
13 contact, the Applicant both, the Applicant,  
14 well, I guess this is one of necessary  
15 grammatical things that could be read either  
16 way. When I first read the last sentence which  
17 is the second sentence under 17, the Applicant  
18 shall initiate direct discussions with said  
19 business or property owners within ten calendar  
20 days to identify and implement appropriate  
21 strategies to avoid or mitigate, I had first  
22 thought that the Applicant was responsible to  
23 implement the strategies within ten calendar  
24 days, but on my second read of that sentence it

1 appears that only direct discussions are  
2 initiated within ten calendar days. Is that how  
3 you read it as well?

4 MS. DUPREY: It is.

5 DIR. MUZZEY: Okay. Thank you.

6 PRESIDING OFFICER WEATHERSBY: I would  
7 point out that there's a discrepancy between  
8 what's in paragraph 17 of the Stipulation and  
9 what's found in Exhibit 268 concerning the  
10 timing of this. Paragraph 17 indicates, as  
11 Director Muzzey just indicated, if someone has a  
12 concern about potential impacts of construction  
13 they can initiate this process whereas in 268  
14 there actually has to be harm done to initiate  
15 the process and documentation submitted, et  
16 cetera. So that's something we probably should  
17 talk about.

18 MR. WAY: So my impression of 17 onward,  
19 it's a precursor to dispute resolution, and I  
20 think as I understand it that's what I like.  
21 Much to what Director Muzzey said is I think the  
22 idea of dispute resolution is sort of onerous  
23 for businesses because they see that as a very  
24 bureaucratic process where they've got to come

1 up with lots of evidence whereas I look at 17 as  
2 a precursor to that process where we're talking  
3 about concerns that can at least be in some sort  
4 of forum and be discussed.

5 I like having that. I think that is a  
6 level of responsiveness that we should be  
7 embracing because I do think that that's a good  
8 outlet for businesses. But what it says to me  
9 is you're having outreach with the company, if  
10 you cannot come to some sort of agreement it's  
11 good, it's done within a limited amount of time,  
12 you know, limited amount of calendar days, and  
13 if you can't do that, then we're going to be  
14 heading into dispute resolution where the stakes  
15 get a little bit higher in terms of proof and  
16 responsiveness. That's how I'm reading it.

17 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

18 MS. DUPREY: I definitely noted that same  
19 tension between processes in the Stipulated  
20 Conditions and the Dispute Resolution Process.  
21 And I think, one, we could clarify it ourselves,  
22 but I think it bears some further talking about  
23 before we do try to clarify it.

24 I would say that paragraph 20 says you're

1 going to be able to go into the Dispute  
2 Resolution Process. I'm thinking that that  
3 overrides this. But I would point out that in  
4 this process, it talks about supporting  
5 evidence, and we're going to go through this in  
6 a minute, but the supporting evidence is not  
7 forward looking. It is what did you actually  
8 suffer. So I do think that that's an  
9 inconsistency between these two pieces and  
10 either we need to correct it after discussing it  
11 or we need to say that you need to have suffered  
12 some actual harm in order for the process to  
13 work. So we could look at it like -- but even  
14 so I think we should clarify it.

15 We could look at it like the Stipulated  
16 Conditions are a place to start, and if you  
17 haven't had any harm, number one, yay, but two,  
18 this is the time to try to avoid that harm, but  
19 before you can go into the actual dispute  
20 resolution, you have to have suffered the harm  
21 so that there's evidence for a Committee to rule  
22 on. And Attorney Iacopino, I see you nodding  
23 your head, and I'm just wondering if you have  
24 any wisdom that you can give to us with respect

1 to this. Are we making something out of nothing  
2 or is there a real issue here? I'm thinking  
3 there is.

4 MR. IACOPINO: That's actually the way that  
5 I read sort of the process when you took Exhibit  
6 193, Condition 17 through 21, and compared it  
7 with the Applicant's 268. I actually read 268  
8 to be sort of a stage in the process when harm  
9 did in fact occur. There appears to be ample  
10 opportunity to try to mitigate anticipated harms  
11 or problems, but when you get to the ultimate  
12 dispute resolution determination where the  
13 Judicial Administrator is determining something,  
14 you're actually talking about something that has  
15 to have actually occurred. So I read these as  
16 sort of going in order.

17 MS. DUPREY: And that would be true in  
18 court, too, correct? You couldn't go there, I  
19 suppose you could through an injunction process  
20 to try to stop it if there was going to be  
21 irreparable harm, but otherwise, you would have  
22 to go with some evidence that in fact the harm  
23 had occurred so that would ameliorate that.

24 MR. IACOPINO: That's correct.

1           PRESIDING OFFICER WEATHERSBY: I think as a  
2 practical matter when you go through the time  
3 frames, there's going to be harm before you get  
4 to this point.

5           MR. FITZGERALD: So that's, in looking at  
6 these two documents, I was a little bit  
7 confused. If you look at Exhibit 268, the first  
8 line of text says the Dispute Resolution Process  
9 may be initiated after the Mitigation Process  
10 outlined in the Stipulated Proposed Conditions  
11 17 to 19.

12          MS. DUPREY: That's right.

13          MR. FITZGERALD: So this is basically just  
14 an expansion as I see it or a more detailed  
15 process description, you go through 17, 18, and  
16 then if you're not satisfied, this explains in  
17 more detail. So is this basically a supplement  
18 to the Stipulated Conditions?

19          MS. DUPREY: I don't think I would describe  
20 it that way. I think this is one process that  
21 has four steps in it. First being you make your  
22 complaint and meet with the Applicant. Second  
23 is you don't like it, it bumps up to an  
24 executive review with the Applicant. Third, if

1           you don't like that you go to mitigation.  
2           Fourth, if you don't like mitigation, you go  
3           into this process. This is an iterative  
4           process, and I think the effort here is an  
5           attempt to try to provide a number of efforts  
6           along the way to get your problem resolved  
7           without going into a courtroom.

8           You can go into a courtroom at any point  
9           and certainly -- any point up until you enter  
10          into the Dispute Resolution Process which is the  
11          last step. At that point you have waived your  
12          rights to go to a court, but that's what the  
13          object is here. Try to resolve issues quickly,  
14          as Director Muzzey points out, either before  
15          they've happened such as what's already happened  
16          in this case where the Applicant has met with a  
17          number of parties and tried to work out  
18          resolutions. A continuation of that. And then  
19          when all else fails, you either go to a  
20          courtroom or you go through the Dispute  
21          Resolution Process that has the fund, that has  
22          the Administrator selected by the SEC.

23          MR. WAY: Question. Make sure I understand  
24          it. I think I like the sequence as I've said.

1           It makes sense to me. The only question I still  
2           have that was raised that when you jump over  
3           from this discussion process about what the  
4           mitigation is going to be over to dispute  
5           resolution, even though it says the mitigation  
6           process in paragraph A as described by  
7           Mr. Fitzgerald, there is the assumption that  
8           something has already happened. So if you take  
9           a concern that might have happened in 17, and  
10          you're going through the process and you don't  
11          think that concern, and I'm thinking back to the  
12          couple that we talked about, you don't think  
13          that concern might be correctly identified and  
14          mitigated, you're having more discussions and  
15          more discussions, then both parties hold up  
16          their hands. And then you go to dispute  
17          resolution. But that concern and hopefully  
18          we've got to it before that concern has become a  
19          reality, if it does become a reality. That's  
20          the only thing I'm trying to wrestle with. That  
21          jump from 20 over to dispute when you have  
22          something that is not hard and fast impacted but  
23          more of a concern that could be realized.

24                MS. DUPREY: I think what we've just said

1 in our previous discussion, so let me try to be  
2 a limit clearer about it. Number one, you  
3 cannot just jump into the Dispute Resolution  
4 Process in Exhibit 268. You must go through the  
5 other steps first.

6 DIR. MUZZEY: That's actually not my  
7 reading of it all.

8 MS. DUPREY: Okay. Let's have a look at  
9 that then.

10 DIR. MUZZEY: I mean, If there are concerns  
11 about potential impacts, there is the process  
12 found in 193, Section 17, 18 and 19, and these  
13 are to address concerns about potential impacts,  
14 try to work out a process for addressing them.

15 If we flip to 268, I think the operative  
16 word is "may" in the first sentence, and it  
17 "may" be initiated by eligible business or  
18 property owners after the mitigation process  
19 outlined, but that's not a "shall." It's a  
20 "may." So my sense is someone went through the  
21 mitigation process, they thought the impacts had  
22 been addressed, the impacts weren't as expected  
23 for any number of reasons, perhaps the  
24 mitigation wasn't as effective as expected, that

1 owner now has the ability to enter the Dispute  
2 Resolution Process.

3 Also perhaps someone didn't have the  
4 foresight for whatever reason to anticipate a  
5 potential impact. Perhaps the Project gets  
6 constructed and they say oh, no, this isn't what  
7 I was expecting. Despite the fact that they  
8 haven't gone through Conditions 17 to 19, I read  
9 this first paragraph dispute resolution is still  
10 open to them regardless of whether or not they  
11 went through 17 to 19.

12 MS. DUPREY: I read it that way, too, the  
13 first time, but then on further looking, I  
14 changed my mind about it because I felt like the  
15 word "may" meant you can institute the process  
16 but you don't have to. I mean, it's open to the  
17 person to decide whether they want to institute  
18 the process.

19 DIR. MUZZEY: Which process?

20 MS. DUPREY: 268, the Dispute Resolution  
21 Process. But I will say that you are fairly  
22 characterizing paragraph 17 which does talk  
23 about potential impacts of construction or  
24 operation and doesn't talk about ones that have

1 actually happened.

2 So Attorney Iacopino, do you have any  
3 thoughts on this?

4 MR. IACOPINO: I think if we look at  
5 paragraph 21, what happens is that's where you  
6 sort of, in the conditions, not the process, but  
7 that's where you sort of transition from the  
8 mitigation to the dispute. That's where you  
9 transition from the mitigation process or the  
10 mediation process into the actual Dispute  
11 Resolution Process if you read that first  
12 sentence. The Administrator is appointed for  
13 all disputes relating to damage to property,  
14 loss of business or loss of income.

15 So the way that I read this is before you  
16 get to that, you try to work it out, you have a  
17 nonbinding mediation, then if you do suffer  
18 damages, however that mediation works out, if  
19 you do suffer damages, you have the right to go  
20 into the Dispute Resolution Process which is  
21 then set forth in paragraph 21 and in more  
22 detail in the other exhibit, Applicant's 268.  
23 That's the way I read this.

24 MS. DUPREY: I'm not trying to be overly

1 lawyerly about this, but let's take an example  
2 of a person who has through construction  
3 suffered harm. This Dispute Resolution Process  
4 is open for a period of two years from the time  
5 that the line goes into service. So a person  
6 could have suffered the harm subsequent to the  
7 line and would suffer, but they might not raise  
8 it until -- like let's take the case of Fat Dog  
9 Oyster.

10 Suppose he says to himself well, I'll see  
11 what happens here, and he suffers damage as a  
12 result of the line going in through the jet  
13 plowing or whatever to his oyster business. The  
14 question that I think Director Muzzey is  
15 raising, does he even have a right to go through  
16 17, 18 and 19 where he has suffered the damage.  
17 It's now not prospective. And does he go  
18 directly into the Dispute Resolution Process?  
19 Or is he still required to go despite the  
20 prospective looking language of 17 through 17,  
21 18 and 19 because the parties were really hoping  
22 that an informal way of managing this was going  
23 to solve the problem rather than going into the  
24 Dispute Resolution Process.

1           And finally, if we don't, aren't  
2           comfortable with it, I suppose we could change  
3           paragraph 17 or the initial paragraph of the  
4           Dispute Resolution Process and clarify it one  
5           way or the other.

6           PRESIDING OFFICER WEATHERSBY:   Couple  
7           points.  First, no one's forced to do any of  
8           this.  They can always tomorrow go to court.

9           Second, this is a proposal before us that  
10          we can change.  I have a couple issues that I  
11          think we should talk about how we want to do it.

12          One is do we want everyone to go through  
13          the various steps before getting into the final  
14          step that's being proposed which is the Dispute  
15          Resolution Process involving the SEC.  My  
16          opinion is yes, it's always better to start with  
17          a dialogue with the Applicant, see if it can be  
18          resolved given a review of mediation, to me  
19          that's a very reasonable escalation of a  
20          concern.  So I would be in favor of requiring  
21          those steps before it gets to the Dispute  
22          Resolution Process involving the SEC.

23          How do people feel about requiring those  
24          steps?

1 DIR. MUZZEY: I think it's important to  
2 offer a path for people both who are concerned  
3 about potential harm as well as the business or  
4 property owner who didn't see the harm coming.

5 MR. FITZGERALD: Yes.

6 DIR. MUZZEY: So if we weren't, were to  
7 change 17 through 19 in 19 I think it needs to  
8 cover both people who anticipate harm who have  
9 been harmed and want to go through this less  
10 formal process first but then not close the door  
11 in 268 to a business or property owner who  
12 didn't anticipate harm.

13 PRESIDING OFFICER WEATHERSBY: I actually  
14 agree with you, and I don't like 268 for a  
15 number of reasons, but that's one of them. I  
16 think that 17, 18 and 19, 20 do deal with  
17 potential impacts. I disagree a little bit with  
18 counsel that 20 requires actual damage. I think  
19 the way it's worded that if -- that in number 20  
20 if the concern, so a potential concern if it  
21 remains unresolved, you can elect to go through  
22 this Dispute Resolution Process. I will say  
23 that in 21 which is my big complaint I think  
24 with 263 is how it conflicts with 21.

1           So in 21, the procedure for the SEC Dispute  
2 Resolution Process is proposed by the Applicant  
3 and Counsel for the Public and then the SEC puts  
4 in those terms or works through that and creates  
5 the rules. That is different than in 268 which  
6 is basically Applicant's proposal. Here's the  
7 form you're going to use, et cetera.

8           So maybe I'm getting ahead of myself, but  
9 with regards to the various steps of 17 through  
10 21, I did believe that those are appropriate and  
11 also deal with potential impacts as well as  
12 actual impacts.

13           MR. FITZGERALD: I have some, I also have  
14 some concerns about the connection of these two  
15 documents. It is my understanding also though  
16 that there is a separate process for filing a  
17 claim if you have been damaged that is not this  
18 process.

19           PRESIDING OFFICER WEATHERSBY: I think this  
20 process is taking the place of what was talked  
21 about very early on in the procedure, in this  
22 docket. This will be the, as I understand it,  
23 this is going to be the procedure.

24           MR. FITZGERALD: Okay. Well, obviously

1 this, when you read 17, it's only with regards  
2 to potential. So if that's not the case, if  
3 that's not -- because I think 17 needs to be  
4 changed, then if there isn't a separate process  
5 to deal with actual damages, needs to be changed  
6 to say potential or actual impacts. Okay? I  
7 still have a question. I still thought that I  
8 remembered that there's a property damage claim  
9 process that may ultimately go to this process.  
10 But in any case, I can try to look for that.

11 But it seems to me that you, when you get  
12 to 20, and first of all, this is all talking  
13 about mitigation so if it is limited only to  
14 potential, someone comes in and says, you know,  
15 Ms. McCosker comes in and says my business is  
16 going to be impacted, I need you to mitigate  
17 those potential impacts, and the Applicant is  
18 required to work with her to come up with  
19 potential mitigation.

20 And then the remainder of this process is  
21 just escalation relative to those mitigation  
22 procedures that would be put in place to prevent  
23 something happening. Then if something actually  
24 happened, it's not covered under this process.

1           PRESIDING OFFICER WEATHERSBY: I think your  
2 point is an excellent one, and I like your  
3 suggestion of adding "or actual" to the language  
4 of 17 if we are to adopt this. Does anyone want  
5 to comment on that or care to agree or disagree?

6           MR. WAY: I absolutely agree with that. I  
7 think as much as possible if we can solve the  
8 issue in this set of stipulations where the  
9 Applicant is working directly with the business,  
10 and see if we can resolve it to the extent we  
11 can, then we should absolutely do that. So if  
12 we can turn 17 into something whether it's  
13 anticipated or actual and it can be worked out,  
14 I think that's good. And as Mr. Fitzgerald  
15 said, we're looking at this as an escalation.  
16 Hopefully, we address I before it gets to the  
17 point of the dispute, and I think also, too, as  
18 we talked about in the dispute process, I mean,  
19 a perceived issue could go through that whole  
20 escalation process as well. So I would think  
21 that the dispute document should keep that and  
22 take that into account as well.

23           PRESIDING OFFICER WEATHERSBY: Is there  
24 anyone who disagrees that this should cover both

1 anticipatory as well as actual impacts?

2 Mr. Fitzgerald?

3 MR. FITZGERALD: I don't know if this is  
4 appropriate or not, but are we able to ask  
5 either the Applicant or Counsel for the  
6 Public --

7 PRESIDING OFFICER WEATHERSBY: No.

8 MR. FITZGERALD: -- whether there's a  
9 dispute?

10 PRESIDING OFFICER WEATHERSBY: No. We're  
11 not, but I would guess that this actually was  
12 their intent of this process because to address  
13 both potential and actual impacts, but we can't  
14 reopen the record and get more information.

15 MR. FITZGERALD: I'm not asking to reopen  
16 the record. I'm simply asking to ask if there  
17 is a separate process for property damage in the  
18 record.

19 PRESIDING OFFICER WEATHERSBY: Okay. I  
20 think early on though the business loss  
21 procedure -- I'm reminded it was during the  
22 Construction Panel's testimony where they  
23 indicated there was this procedure. I think  
24 we've seen it in other dockets where somebody

1 fills out a form and sends in it in about the  
2 losses.

3 MR. FITZGERALD: Right.

4 PRESIDING OFFICER WEATHERSBY: It's my  
5 understanding that this procedure that's being  
6 outlined here is to replace that, but we should  
7 probably just verify that.

8 MR. FITZGERALD: That's my concern.

9 PRESIDING OFFICER WEATHERSBY: If there's  
10 something in the record that says whether that's  
11 true or not. Mr. Shulock?

12 MR. SHULOCK: So I don't disagree that  
13 there should be ADR for actual and for lack of a  
14 better word unanticipated damages that weren't  
15 attempted to be mitigated when they were seen to  
16 be just potential damages, but I would hesitate  
17 to try and just modify what we have here. I  
18 think that we should design that process and  
19 then impose it as a condition and do it  
20 separately from this one.

21 PRESIDING OFFICER WEATHERSBY: I'm sorry  
22 I'm not quite understanding.

23 MR. SHULOCK: We're trying to take their  
24 product which has been pretty much every single

1 paragraph is interrelated, right? And refers  
2 back to the previous one. So there's an entire  
3 process laid out and rather than try and take  
4 that and bend it to our desires, I think we  
5 should just come up with a process that we  
6 believe that they should go through for those  
7 after-the-fact damages and impose it.

8 PRESIDING OFFICER WEATHERSBY: Director  
9 Muzzey?

10 DIR. MUZZEY: I also had concerns about  
11 trying to fit one process into the other and  
12 initially it was a concern about the wording  
13 that would be added to Condition 17 because I  
14 didn't feel that actual damage versus  
15 anticipated impact, potential impact or actual  
16 impact really covered what is covered under 268  
17 which is physical damage to real or personal  
18 property, loss of business income, diminution in  
19 the value of real property owned by the  
20 Applicant or unreasonable interference with  
21 access to or use of real property owned by the  
22 Applicant.

23 So one way that we may be able to do it  
24 more neatly is looking at 268 and the process

1           laid out there clarified by the first sentence a  
2           bit, but then also enables someone who has  
3           suffered some sort of damage of the four I just  
4           read, and say that rather than going to dispute  
5           resolution directly they are also eligible to go  
6           through the process in 17 to 19. And then leave  
7           17 to 19 intact. Does that make sense?

8           MS. DUPREY: I would just point out in  
9           paragraph 21 which is part of 17 to 19 it's  
10          pretty clear that the damage has to have  
11          happened. So they're looking at it like you're  
12          not going into dispute resolution for things  
13          that might happen but in fact do happen, as I  
14          read that.

15          So going back to 17 to 19, it still seems  
16          to me that with the addition of those few words  
17          that it covers these things. I don't know what  
18          we would put in a separate process. But if  
19          people want to go through that exercise we  
20          certainly could, but I think that at the end of  
21          the day, the Dispute Resolution Process is  
22          about, as we discussed, damage that has actually  
23          occurred.

24          MR. FITZGERALD: I would disagree with

1           that. I read 21, and I was just focusing on  
2           this, is that it says shall administer a Dispute  
3           Resolution Process for all disputes relating to  
4           damage to property. I would read that to say  
5           all meaning potential or real.

6           MS. DUPREY: I think that's a pretty tough  
7           interpretation of that language.

8           PRESIDING OFFICER WEATHERSBY: Regardless  
9           of how it reads, what do we want it to read? Do  
10          we want this whole process to deal with  
11          potential disputes? You know, my cages aren't  
12          being cleaned. Dispute over how a stone wall  
13          may be being traversed. Those sorts of things.  
14          Do we want them to be able to go through all of  
15          these stages, including the SEC-involved Dispute  
16          Resolution Process or do we want to when we get  
17          to that final step require actual damage to have  
18          occurred.

19          My personal opinion is that if someone has  
20          a concern about a potential impact of  
21          construction on their business or property that  
22          they should be able to go through all of these  
23          stages and resolve it through this process. My  
24          fear is that if it does not, then somebody will

1 attempt to or will go to court which is an  
2 alternative for them at any point because they  
3 can't get resolution through this process.

4 MR. FITZGERALD: I still would like to know  
5 if there is a property damage claim process  
6 which I believe there is and potentially if that  
7 process ends in paragraph 21 also.

8 PRESIDING OFFICER WEATHERSBY: 21 certainly  
9 covers damages to loss of income, loss of  
10 business, but there may be a separate process.  
11 I think it's subsumed by this, but maybe we can  
12 take a few minutes. If this is that important,  
13 we'll take a few minutes and we'll find the  
14 answer to that.

15 MS. DUPREY: Madam Chair, could I just ask  
16 a question related to your previous statement?  
17 Because at the moment I'm just trying to get my  
18 arms around what a process would look like. And  
19 one of the questions that jumps to mind for me  
20 if we open 268 up to things that haven't yet  
21 occurred, what does that mean for the  
22 construction? Like it's going along, the person  
23 has this issue, they're going through this  
24 process. This process could take a couple of

1 months. I mean, does construction stop? So I  
2 just wasn't sure what the impact of that was.  
3 Whereas, if you went to court trying to do this,  
4 it would be very clear because you would either  
5 file for an injunction or you wouldn't. But I'm  
6 just wondering about what you're thinking about  
7 that.

8 PRESIDING OFFICER WEATHERSBY: So my  
9 understanding of this process is it does not  
10 impact the construction schedule in any manner  
11 unless there's resolution by the SEC Dispute  
12 Resolution Administrator that says to stop and  
13 to avoid whatever impact it is. But my  
14 understanding is this does not stay any  
15 construction.

16 MS. DUPREY: If that's so, why would you  
17 not ask the individual to wait until they  
18 actually suffered the harm. Why would you put  
19 them into a process that the SEC has to to some  
20 degree administer, although it's totally paid  
21 for by somebody else with damages, why wouldn't  
22 you say okay, we've done everything we can to in  
23 talking and trying to make this work, and now  
24 when you suffer the damage, then we'll resolve

1 it with actual money.

2 PRESIDING OFFICER WEATHERSBY: So my  
3 personal opinion is that there's some damages  
4 that are difficult or impossible to quantify and  
5 cannot be made up by money damages. Perhaps  
6 there's an important historic site that is being  
7 impacted despite everyone's efforts. And that  
8 concern is raised and goes through this to me.  
9 To me, that would be a reason to go through this  
10 process for a potential impact rather than wait  
11 until there's some damage to it.

12 MS. DUPREY: So you're looking to this  
13 process to mediate, if you will, those kinds of  
14 issues, to be a further mediation, a fourth step  
15 of mediation if you will. I'm looking at this  
16 process as we're going to pay you money.

17 PRESIDING OFFICER WEATHERSBY: I think this  
18 process is a lot more than that. I think it's a  
19 way to work through issues. Just take, for  
20 example, Ms. Heald that first she has to talk to  
21 the Applicant about what kind of mitigation will  
22 you agree to. They've already agreed to a lot  
23 of things. She needs to respond to that, you  
24 know, work through this and kind of come to some

1 final offer. If she still doesn't like it, she  
2 elevates it to the executive review and it goes  
3 through that process. So to me it's an  
4 issue-resolving process and not just a  
5 compensation process.

6 MS. DUPREY: That may be what we want it to  
7 be, but that's not how it's drafted.

8 MR. SHULOCK: I read that provision a  
9 little differently because she has to be  
10 unsatisfied with the outcome of the mitigation  
11 efforts. So those mitigation efforts have to  
12 proceed, and if after that she suffers damages,  
13 then it goes to executive review. The executive  
14 review may result in some more work on her  
15 property, it may result in a money offer, and if  
16 she doesn't like that, then she can go to  
17 mediation and maybe they can work up a plan that  
18 works because the outcome was unsatisfactory to  
19 her, and then following mediation if she's still  
20 unsatisfied, then she can go through this  
21 process that replaces a court process.

22 PRESIDING OFFICER WEATHERSBY: Right, but  
23 that process deals with all of her issues and  
24 not just I want "X" amount of dollars. In Ms.

1 Heald's case, just for an example, dealing with  
2 her nursery stock and well water, et cetera.

3 MR. SHULOCK: But I think by that time her  
4 well may be damaged because the mitigation plan  
5 was to put down some protective stuff and the  
6 well is damaged. So she's unsatisfied with the  
7 mitigation, she would go to executive review,  
8 but, I mean, it's not going to, I think, solve  
9 the problem of her saying I don't think that the  
10 pads that you're going to place down are  
11 protective enough. I think you should dig me a  
12 new well right away.

13 MS. DUPREY: I also don't see it as I want  
14 a pole moved or that sort of thing, at least as  
15 I read this, and again, it may be that we want  
16 something else. This seems to me to be talking  
17 about actual harm and compensation for that harm  
18 when you look at the eligible Applications and  
19 Applicants and the supporting evidence. It  
20 seems like a "we're going to reimburse you for  
21 the harm process" once you establish that you've  
22 been harmed.

23 PRESIDING OFFICER WEATHERSBY: So this is a  
24 good time to get an opinion from our counsel as

1 to what this covers? And if you want to take a  
2 break and look it over and give us an opinion.

3 MR. IACOPINO: That would be good. Thank  
4 you.

5 PRESIDING OFFICER WEATHERSBY: In  
6 attorney/client nonmeeting we can do that.  
7 Before we break for that then, Director Muzzey?

8 DIR. MUZZEY: Not on the subject of what  
9 our attorney is doing, but to get back to Mr.  
10 Fitzgerald's concerns, I was looking, concerns  
11 about another process out there, I was looking  
12 back through my notes, and early in our  
13 proceeding, I believe when Mr. Quinlan was  
14 testifying there was a property value guarantee  
15 which was a concept discussed as part of the  
16 Northern Pass Project. Again, given that it was  
17 a merchant project and given this is a  
18 reliability project, that property value  
19 guarantee is not part of what we're talking  
20 about now, but I'm wondering, is that what you  
21 had in your memory?

22 MR. FITZGERALD: No.

23 DIR. MUZZEY: No? Okay. I tried.

24 MR. FITZGERALD: There may have been some

1 coincident discussion there because a person may  
2 assert that they have had damage as a result of  
3 their property value being lowered, okay?

4 DIR. MUZZEY: Right.

5 MR. FITZGERALD: But I believe I remember  
6 there being some discussion of a property damage  
7 claims process.

8 This document is entitled Mitigation and  
9 Dispute, and it talks, starting with paragraph  
10 17, it talks about potential damage, and then it  
11 talks about mitigation and then mitigation,  
12 there's a difference between being unsatisfied  
13 with the mitigation and actual harm. You may be  
14 unsatisfied with the mitigation, but you may not  
15 have, you know, had actual damage. So I think  
16 this process is different from the process, from  
17 the process of someone whose business or  
18 property has been in some way harmed.

19 DIR. MUZZEY: So getting back to what our  
20 Chair asked us a couple minutes ago, in your  
21 opinion, if someone is unsatisfied with the  
22 mitigation options that are discussed, they've  
23 gone through the 17, 18, 19 and 20 and they're  
24 still not satisfied, well, 17, 18 and 19, do you

1 feel that dispute resolution should be open to  
2 them even if harm has not yet, actual  
3 construction and operation has not begun yet?

4 MR. FITZGERALD: Absolutely. I think 17  
5 envisions, 17 through 19 envision that, and I  
6 think if you go back to 268, the beginning  
7 paragraph says the Dispute Resolution Process  
8 may be initiated by an eligible business or  
9 property owner after the mitigation process  
10 outlined in the Stipulated Proposed Conditions  
11 17 to 19 including informal resolution,  
12 executive review and mediation.

13 I think 17 envisions this as being a  
14 process to resolve disputes about mitigation,  
15 and I think that 268 says this is what follows  
16 after you have reached that, and I think their  
17 actual property damage is a separate process.

18 PRESIDING OFFICER WEATHERSBY: Why don't we  
19 get an opinion of counsel as to what they  
20 believe this covers. Why don't we take a break  
21 and go into a nonmeeting and see if we can  
22 resolve some of these issues?

23 MR. IACOPINO: Mr. Fitzgerald, there was  
24 some discussion regarding property damage claims

1 in the testimony of Mr. Quinlan on Day 1 in the  
2 morning session. Page, around page 24 and  
3 around there. Just so that, if you wanted to  
4 take a look at that.

5 MR. FITZGERALD: Can I also ask you why are  
6 you precluded from asking -- I don't believe  
7 that that is reopening up the record. Why are  
8 we precluded from simply asking the Applicant if  
9 there is such a process or the Counsel for the  
10 Public?

11 MR. IACOPINO: Because the record is  
12 closed, and there are parties other than Counsel  
13 for the Public and the Applicant who  
14 participated, and they then have questions and  
15 want to expand the record even more in which  
16 case we would have to address that.

17 MS. DUPREY: Can I just read a paragraph  
18 from Counsel for the Public's brief that may  
19 help to address this? It's found at page 19 so  
20 paragraph B, and it's entitled the Applicant's  
21 agreed-upon Dispute Resolution Process mitigates  
22 the potential adverse effect of the Project on  
23 property values. To mitigate against potential  
24 property value impacts, the Applicant has agreed

1 to mitigation and Dispute Resolution Process  
2 that includes adjudication of diminution in  
3 value claims by an independent claims  
4 administrator. Proposed conditions number 20 to  
5 21 set out a procedure whereby affected property  
6 owners can obtain an independent view of claims  
7 of a loss in property value arising from the  
8 construction or operation of the Project. If  
9 imposed by the Subcommittee as a condition of  
10 the certificate, the Dispute Resolution Process  
11 would provide an unbiased avenue for affected  
12 property owners to be compensated for any  
13 diminution in value that could be adequately  
14 demonstrated through an appraisal for other  
15 evidence acceptable to the Administrator.

16 And I raise this --

17 MR. SCHMIDT: I'm sorry. Where are you  
18 reading from?

19 MS. DUPREY: I am reading from Counsel for  
20 the Public's brief. It's Page 19. It's  
21 paragraph B. It's really in the discussion of  
22 Dr. Chalmers' report.

23 The paragraph concludes, although I don't  
24 think that this is that relevant to this

1 discussion, less to the extent that  
2 Dr. Chalmers' testimony underestimates the  
3 amount of property value losses. The Applicant  
4 would be obliged to pay such losses if awarded  
5 by the Claims Administrator.

6 And the reason that I raise this is that I  
7 feel like if there were an additional process  
8 that certainly that would have been cited in  
9 this paragraph because this is the segment of  
10 the brief where essentially, if I may  
11 paraphrase, the Counsel for the Public is  
12 criticizing Dr. Chalmers' report and  
13 methodology. And he winds up by saying in the  
14 end that omission or whatever is mitigated  
15 against by this process so that property owners  
16 will be able to get restitution if their  
17 property values are damaged. And my whole point  
18 in all this is if there was another process, I  
19 think it certainly would have been stated here.

20 MR. FITZGERALD: I don't disagree with  
21 that, and I also if I go to paragraph 21, it  
22 states that, after the part that I read, for all  
23 disputes relating to damage to property and loss  
24 of business or loss of income and/or diminution

1 in value of real property. So seems to me that  
2 21, as I said, whether there's a separate  
3 process to get to it or not, 21 certainly seems  
4 to be intended to resolve both potential  
5 mitigation disputes and disputes over property  
6 damage. It seems to me that the language may  
7 not connect greatly or there may be some gap  
8 here and I apologize, as I said, I just have in  
9 the back of my head that that was a property  
10 damage claim process. But this 21 seems  
11 intended to resolve both, although 17 to 19  
12 going up to it seem to only be prospective  
13 damage. So I don't disagree with Ms. Duprey's  
14 solution.

15 PRESIDING OFFICER WEATHERSBY: I agree that  
16 this process seems to be the exclusive process  
17 for resolving all claims and is intended to deal  
18 with both potential and actual harm, and that's  
19 further supported in my mind with the  
20 Applicant's brief, page 18, when they discuss  
21 Dispute Resolution. They talk about this  
22 process exclusively and no other business loss  
23 process, and they indicate that this process is  
24 designed to address any concerns that arise, any

1 concerns that arise during or post-construction,  
2 and then they cite some examples about physical  
3 damage to real or personal property, loss of  
4 business, diminution of value, interference with  
5 access, noise, littoral rights.

6 So to me this is -- two of the questions  
7 that we have, is this the only process for  
8 resolving issues, I think the answer is yes.  
9 And two, is it both actual and potential, and I  
10 think the answer is yes.

11 MR. FITZGERALD: I'm far less concerned  
12 about whether there's a separate process knowing  
13 that 21, understanding that 21 is intended to  
14 resolve both issues. There still may be a  
15 somewhat of a disconnect here that we have to  
16 consider, and one, as I suggested, there's, we  
17 can add potential and actual impacts or this  
18 says, 17 says contact information for business  
19 and property owners concerned, about and we  
20 could just strike potential and say about  
21 concerned about impacts because concerned can be  
22 before, during or after. So that's --

23 MR. SHULOCK: I was just about to suggest  
24 that because when I look at this, it looks like

1           they may have put in the word "potential"  
2           because they didn't want to have a preadmission  
3           that there was an actual impact on their  
4           property, and sometimes that word "potential" is  
5           put in there to sort of stave off the impression  
6           that something bad actually has happened.

7           MR. FITZGERALD: That's a possibility.  
8           Yes.

9           MR. SHULOCK: Because eventually this is  
10          going to have to go to a Dispute Resolution  
11          Process and the party wouldn't want to have  
12          admitted to the full extent of what another  
13          party was claiming to have an effect.

14          MR. FITZGERALD: Right.

15          MR. SHULOCK: So that may be the actual  
16          purpose of those words in there.

17          PRESIDING OFFICER WEATHERSBY: So your  
18          suggestion is to strike "potential."

19          MR. SHULOCK: I think we want to sit back  
20          and think about that for a while and work  
21          through the document, but I think if we get rid  
22          of that word "potential," then what would that,  
23          what I think it would do is it would require  
24          people who are concerned about something that's

1           actually happened to go through a mitigation and  
2           mediation prior to going to the Dispute  
3           Resolution Process which would satisfy me.

4           MR. FITZGERALD: I think at this point I'd  
5           like to, as far as what the, understanding what  
6           we want to do, I'd like to hear from counsel as  
7           to what they think the best approach is to do  
8           that. I apologize for belaboring the point  
9           about the separate process.

10          PRESIDING OFFICER WEATHERSBY: Why don't we  
11          break and meet with counsel who won't  
12          necessarily advise us as to the best route to go  
13          but will advise us on the legal aspects of what  
14          we're considering. So why don't we take a  
15          little break, we'll meet with counsel and we'll  
16          come back and plow on.

17          MS. DUPREY: Madam Chair, could I just say  
18          that it is my preference that we add the word  
19          "actual" instead of deleting the word whatever  
20          it is. And I say that because it isn't clear to  
21          me that "concerned about impacts" means things  
22          that might happen as opposed to already have  
23          happened. I raise that because I think that  
24          it's important that to the extent things can be

1 resolved before they actually happen that that  
2 occur. And I saw this language as being a  
3 jumpstart on things and not having to wait until  
4 they've become a reality, and I just, I don't  
5 know why we couldn't add the word "actual" and  
6 take care of it rather than deleting this word.  
7 So just for whatever it's worth.

8 PRESIDING OFFICER WEATHERSBY: So it sounds  
9 like we all want the same thing, we're just  
10 trying to decide the best way to word this,  
11 whether it's striking "potential" or adding "and  
12 actual." Let's think about that. Let's meet  
13 with counsel, and we'll come back.

14 (Nonmeeting with Counsel 11:37 - 12:29 p.m.)

15 PRESIDING OFFICER WEATHERSBY: We are going  
16 to resume talking about this whole Dispute  
17 Resolution Process. It's become clear through  
18 our deliberations that there's some disagreement  
19 as to exactly what the process should include.  
20 Rather than trying to wordsmith the proposal  
21 that's before us, I'm going to ask folks that  
22 would like to speak, not everyone needs to speak  
23 but if you'd like to speak and outline what you  
24 believe the process should include that would be

1 helpful, and then what I think we'll do is once  
2 we have a consensus, we'll talk about the  
3 different ideas, we'll try to reach a consensus  
4 as to what the process should include, and we'll  
5 leave it to our counsel to draft the actual  
6 process.

7 So if you'd like to speak, don't try to  
8 wordsmith paragraph 17 through 21 but really  
9 talk more in concepts as to what you'd like to  
10 see. Such things as future impacts to the  
11 property as well as actual impacts had I guess  
12 come up as an issue. Timing issues, whether  
13 actual damage needs to be occurring before you  
14 get to the last step involving the SEC. Those  
15 sorts of issues.

16 So if anyone would like to speak as to what  
17 they believe the process should look like, that  
18 would be appreciated. Mr. Shulock, are you  
19 going to start, okay?

20 MR. SHULOCK: I'm happy to start. So I  
21 would like to see the Dispute Resolution Process  
22 under 21 and the procedures that they've given  
23 us in --

24 PRESIDING OFFICER WEATHERSBY: That's the

1 Dispute Resolution Process involving the SEC  
2 Dispute Resolution Administrator?

3 MR. SHULOCK: That's correct. I would like  
4 to see that apply only to damages that have  
5 already occurred or to things like prospective  
6 business damages after the construction had  
7 completed.

8 And then I would like to see 17 through 19  
9 apply to damages that a business or property  
10 owner anticipates will happen or have actually  
11 happened.

12 And then I would like to see the process  
13 include some review and possibly mediation of  
14 mitigation plans for those anticipated or feared  
15 damages that a property owner might have. I  
16 don't think that's necessary for when damage has  
17 actually already occurred because the process  
18 would cover that.

19 And I would, with those features I think  
20 I'm happy. I don't think that the language is  
21 entirely clear on those issues. So I would like  
22 to see some redrafting to clarify that if  
23 Counsel believes that those are current features  
24 of the way that it works.

1 PRESIDING OFFICER WEATHERSBY: Mr. Way?

2 MR. WAY: Clarifying question. And I  
3 believe I agree with everything you just said,  
4 and in 21 you're dealing with actual damage.  
5 When you go into 268, you're dealing with actual  
6 damage, correct?

7 MR. SHULOCK: Right. Well, it would be  
8 damages that have already occurred or some types  
9 of anticipated damages like lost future business  
10 income, right? Which would occur after, there  
11 would have to have been some action taken and  
12 that would be a foreseeable harm in the future.

13 MR. WAY: Thank you. And I agree with the  
14 changes to 17 as well.

15 MR. SHULOCK: If I can add, I think that it  
16 is appropriate to have that process substitute  
17 for court process so that people would be  
18 waiving going to court and having a jury trial.

19 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

20 MS. DUPREY: I had a question. I think to  
21 the extent that we can tie in our comments to  
22 the actual exhibit is useful.

23 So are you feeling, Mr. Shulock, that B(2)  
24 loss of business income and the evidence that is

1 required to support it in paragraph D is  
2 insufficient?

3 MR. SHULOCK: I don't know. I'll leave  
4 that to counsel, but, you know, we're talked  
5 about actual damages or damages that have  
6 occurred. It's just that some of those damages  
7 may occur in the future, even though the harm  
8 has been done today, and I don't want to  
9 preclude that. I don't know how that would have  
10 to be worded.

11 PRESIDING OFFICER WEATHERSBY: Okay. We've  
12 got the concept out there, and thank you for  
13 sharing with us your thought of what the process  
14 should look like.

15 Ms. Duprey, would you like to comment on  
16 what you believe the process should look like?

17 MS. DUPREY: Sure. First of all, I'd like  
18 to say that Exhibit 268 is a document that was  
19 proposed to us by both Counsel for the Public as  
20 well as the Applicant and so that carries a lot  
21 of weight for me. It's not a document the  
22 Applicant put into the record but was an agreed  
23 upon condition that they have both asked us to  
24 adopt. So I don't really want to stray very

1 far.

2 The same with paragraphs 17 through 21, I  
3 don't really want to stray very far from that.  
4 I don't want to be in the business of doing  
5 that.

6 So my approach to this is to keep it as  
7 close to the language that these two parties  
8 have put into the record.

9 With that said, I think that paragraphs 17  
10 through 20 work perfectly well for actual  
11 damages as well as for prospective damages, and  
12 I am opposed to setting up a separate procedure  
13 as was suggested previously. I think that's  
14 complicated and burdensome for us to try to  
15 draft, and it also seems unnecessary to me. I  
16 think these paragraphs manage it perfectly well.

17 I'm opposed to anything that implies in any  
18 way that construction is going to be held up  
19 while this goes, on. And I think that if people  
20 are concerned about prospective damage they need  
21 to immediately engage in this process, and so I  
22 don't think we should be in the business of  
23 legislating when construction should begin. I  
24 think that this is up to people who feel like

1           they want to have these discussions with the  
2           Applicant and that they should do it right away.

3           I do think conceptually with respect to  
4           paragraphs 17 through 20 that it should be  
5           clarified that they relate to, in the case of,  
6           that it relates to mitigation plans as well as  
7           to damage that's actually been done to both  
8           things.

9           I also want to make it clear that with  
10          respect to waiving of the right to go to court  
11          it is also waiving the right to a jury trial so  
12          we're clear about that.

13          And I think for me the most important thing  
14          is that the process of 268 and paragraph 21 is  
15          for damages that have occurred. If it gets to,  
16          as has been suggested, to damages that are  
17          prospective other than perhaps the business  
18          damages that Mr. Shulock refers to, I think that  
19          we put the SEC in the position of becoming  
20          essentially a court, and that is not what was  
21          envisioned by this document. It's not what was  
22          asked for by Counsel for the Public or by the  
23          Applicant. They asked for quite a narrow thing  
24          which is resolution of essentially financial

1 damages for specific kinds of harms. And I  
2 don't know why we would put ourselves in the  
3 position of drafting up a whole procedure for  
4 something else, what differentiates this case  
5 from any other that we would insert ourselves in  
6 that way and so I would be opposed to that.  
7 Thank you.

8 PRESIDING OFFICER WEATHERSBY: Thank you.  
9 Anyone else care to comment as to what they  
10 believe the dispute resolution should look like  
11 conceptually?

12 MR. SCHMIDT: I will. First of all, I  
13 think it should be a very straightforward  
14 document and that goes pretty much without being  
15 said, but I want it to promote early action and  
16 not enable a construction delay.

17 I like the idea of the existing outline,  
18 the opportunity to negotiate in good faith and  
19 the executive review opportunity, and then I  
20 think it's important to have a mediation session  
21 like there is, but if it's unsuccessful, the  
22 Resolution Administrator or similar title I  
23 think is important but not until there was clear  
24 evidence of the damage, be it a business setback

1 or a physical damage. Personally, 17 to 21 I  
2 think is fairly decent and I'd like to keep as  
3 close to that and 268 as close as possible.

4 PRESIDING OFFICER WEATHERSBY: Thank you.  
5 Anyone else? Mr. Way?

6 MR. WAY: To expand on my earlier comments,  
7 I'm agreeing pretty much with what I'm hearing  
8 so far. I mean, I keep coming back to my  
9 original thought that as I'm thinking about, for  
10 example, some of the instances that have been  
11 brought before us, for example, like the Heald  
12 property or Fat Dog, how they might go through  
13 this mitigation process. It's good to kind of  
14 put yourself in their place as you think through  
15 this, and I keep coming back to the thought that  
16 I think that this process is going to be  
17 satisfactory.

18 I do agree that we might want to clarify on  
19 17 to open the door for maybe concerns that  
20 might be anticipated. I'm going to leave it to  
21 Counsel for that. I think as I understand it,  
22 you know, as we get down do 20 and 21, we're in  
23 realized damage and that is we get into 268  
24 that's damage that has occurred.

1           Like Ms. Duprey, I'm hesitant to wordsmith  
2           on 268 if I think that it's a process that  
3           overall will work. Thank you.

4           PRESIDING OFFICER WEATHERSBY: Anyone else  
5           care to chime in?

6           MR. SHULOCK: There was one other issue  
7           that I saw that I forgot to raise. I don't know  
8           that I have a problem with it. I just thought  
9           I'd raise it. And that is the two-year period  
10          for filing claim. I was wondering if others  
11          thought that that was an adequate amount of time  
12          given that there's a different statute of  
13          limitations for property damage and business  
14          claims. It's been a while since I looked, but I  
15          think three years.

16          PRESIDING OFFICER WEATHERSBY: Director  
17          Muzzey?

18          DIR. MUZZEY: So I agree with a number of  
19          things that have been said. I also see the  
20          value of early consultation on potential impacts  
21          so I, in cases where we have owner concerns  
22          about potential impacts, 17 to 19 seems to lay  
23          out a good process. I think the phrase of  
24          "unsatisfied with the outcome of the Applicant's

1 mitigation efforts" that appears in 18 and 19  
2 could be clarified. That we're not talking  
3 about the outcome of mitigation itself but  
4 rather the Applicant's proposal to do either  
5 avoidance or mitigation.

6 At the end of 19, with the scenario of  
7 potential impacts, we're left with either an  
8 agreement on how to avoid or mitigate potential  
9 impacts or no agreement as to how to avoid or  
10 mitigate potential impacts. In either case, I  
11 recommend the potential impact process stopping  
12 at this point, and we can turn to the scenario  
13 that damage has happened as it's defined in 268  
14 B, items 1 to 4.

15 For people who have had damage that has  
16 happened, I think we can encourage them, the use  
17 of the word "may" to go through the process as  
18 outlined in 17 to 19, but I don't feel it should  
19 be mandatory. I think it also raises timing  
20 issues if it's made mandatory. Let's see.

21 But in either case, whether you've gone  
22 through 17 to 19 with a potential concern or  
23 not, I think you still should have the right to  
24 go through dispute resolution, and if any

1 agreements made with the Applicant to avoid or  
2 mitigate damage are not successful, I feel you  
3 should also have the right to continue through  
4 dispute resolution.

5 My one question with 19 and the idea of  
6 mediation, I'm not certain who is paying for the  
7 independent mediator. And I also had a question  
8 of the two year versus something longer and I  
9 would be open to the idea of a three-year  
10 timeline.

11 MS. DUPREY: I'm sorry, Madam Chair. I  
12 didn't understand what Director Muzzey was  
13 proposing. I don't think I understand whether  
14 you want the 268 process, the dispute, the  
15 actual Dispute Resolution Process which as it's  
16 written now is for damage that's actually been  
17 done or are you looking to expand it into a  
18 review of mitigation plans that an Administrator  
19 would somehow oversee.

20 DIR. MUZZEY: No.

21 MS. DUPREY: Okay. Thank you.

22 DIR. MUZZEY: I'm envisioning 268 to be  
23 used for cases where damage has been done.

24 MS. DUPREY: Okay, good. Thank you.

1 DIR. MUZZEY: Damage for the various types  
2 of impacts as they've defined in B, 1 to 4.

3 MS. DUPREY: All right. Thanks.

4 PRESIDING OFFICER WEATHERSBY: Mr. Way.

5 MR. WAY: Just a question on the two year  
6 date. When I look at it -- bear with me here.  
7 I just lost my place. Shall accept written  
8 requests for dispute resolution until the two  
9 year anniversary date of the date when the  
10 transmission line is placed in service.

11 So given the fact that construction can  
12 occur for several years, you know, we're not, we  
13 have time to resolve these issues through the  
14 process. It's just that you have two years  
15 after the transmission line is in place to  
16 finalize it. So when we're talking about three  
17 years, it's already three years in place or four  
18 years in place, maybe even up to five in certain  
19 places. So I just want people to think about  
20 that. If we're going to expand it to three  
21 years, that's above and beyond when the impact  
22 might actually happen which could be years  
23 earlier.

24 MR. SHULOCK: Point taken.

1           PRESIDING OFFICER WEATHERSBY: Quick  
2 question for Counsel. In mediation generally,  
3 if two parties can agree go to mediation, are  
4 the costs shared equally, the cost of the  
5 mediator and any mediation process charges  
6 shared by the parties in equal amounts or does  
7 one party absorb those costs?

8           MR. IACOPINO: In the Superior Court in  
9 civil litigation the costs are usually shared  
10 between the parties. Sometimes in marital  
11 litigation with marital mediation sometimes one  
12 party or the other is determined to bear the  
13 cost generally because of an inequity in earning  
14 capacity. So both methods are used to pay for  
15 mediators.

16           PRESIDING OFFICER WEATHERSBY: Thank you.  
17 Listening to everyone, I'm actually feeling like  
18 we're a lot closer than we thought we were. I  
19 think there's agreement on a number of points.  
20 Chime in if I'm incorrect. But I'm hearing the  
21 consensus that the mediation process in general  
22 should start as outlined in 17 through, should  
23 be as outlined in general in what has been  
24 proposed by Counsel for the Public and the

1 Applicant starting with talking with the  
2 Applicant and the affected property business  
3 owner talk, try to work things out. If they  
4 can't, it goes to an executive review. If  
5 they're still dissatisfied, mediation, and then  
6 goes on to the Dispute Resolution Process  
7 involving the SEC.

8 So I'm sensing an agreement that those  
9 steps should be there. I'm also sensing an  
10 agreement that for the steps through informal  
11 talks through mediation that that should be both  
12 for anticipated damages as well as actual harm  
13 that has occurred, but with the last step which  
14 is the SEC-involved Dispute Resolution Process  
15 there needs to be actual damages having  
16 occurred, including anticipatory lost business  
17 as a result of a harm.

18 Does anyone disagree with what I've just  
19 summarized as at least two points of what I  
20 thought was agreement? Mr. Fitzgerald?

21 MR. FITZGERALD: In general, yes, I agree.  
22 I would like to have Counsel give us some input,  
23 not necessarily right now but after he's had  
24 some time to study it, to provide opinions on

1 the -- I, too, am not in favor of changing this  
2 language significantly. It was negotiated  
3 between the two parties and not knowing what  
4 their intent was and so on there's not -- so I  
5 would just like Counsel to advise us on his  
6 thoughts on in paragraph 17, line 3, what the  
7 term "potential" means. Further in that  
8 paragraph -- go ahead.

9 PRESIDING OFFICER WEATHERSBY: This was to  
10 be sort of a conceptual -- I don't want to  
11 wordsmith those right now.

12 MR. FITZGERALD: I understand, but in order  
13 to ensure myself that this says what I think it  
14 says, I would like Counsel's opinion. There's  
15 been several things that have been raised.

16 PRESIDING OFFICER WEATHERSBY: What is your  
17 concept for Section 7, for --

18 MR. FITZGERALD: I agree with the concept  
19 that you outlined. Whether or not this  
20 accomplishes it or not depends to me on some  
21 definitions.

22 PRESIDING OFFICER WEATHERSBY: So what I  
23 thought the process would be, and I thought was  
24 that Counsel is then going to work up some

1 language for us which we will review and then  
2 approve. So he's going to take our concepts  
3 that we're talking about now, work it in, and  
4 then we'll have a chance to examine every word  
5 that is put forward before we approve any  
6 condition for a Dispute Resolution Process.

7 MR. FITZGERALD: I'm going to give you one  
8 example and then we can hash it out or not. But  
9 further on that paragraph it says the Applicant  
10 shall initiate direct discussions. I'd like to  
11 know what does that mean. Does that mean that  
12 they've made a phone call to them? Does that  
13 mean that they have actually had a meeting?

14 So I have a few questions that I need to  
15 answer to better understand what this language  
16 is. I can wait and look at proposed language if  
17 that's the desire. My intent was to raise these  
18 so this Counsel could consider them in his  
19 deliberation to come up with revised language.

20 PRESIDING OFFICER WEATHERSBY: If you want  
21 to --

22 MR. FITZGERALD: I can raise them with him  
23 separately or individually also.

24 PRESIDING OFFICER WEATHERSBY: Okay. I'm

1 also sensing agreement that what is being  
2 elevated at each step of the process is the  
3 proposed mitigation for the alleged harm and not  
4 a specific --

5 MR. WAY: Could be both.

6 PRESIDING OFFICER WEATHERSBY: -- outcome  
7 or --

8 MR. SHULOCK: The problem is is that's  
9 ambiguous.

10 MR. FITZGERALD: That's what I wanted --  
11 another one that I wanted to know about is what  
12 is the term "outcome" in 18 and 19 --

13 MR. SHULOCK: We've identified ambiguity on  
14 the word "potential," right? And we've  
15 identified ambiguity as raised by Director  
16 Muzzey, the outcome of the Applicant's  
17 mitigation efforts. And the ambiguity on that  
18 is whether that means that they will have  
19 actually taken the mitigation plan and --  
20 whether that applies to a mitigation plan or  
21 whether that applies to mitigation that has  
22 already been done and perhaps has failed.  
23 Right? So there's a little ambiguity there for  
24 some of us. And I think some people would like

1 to see this process applied to the plan so that  
2 there's some hope for, if necessary, a mediated  
3 agreement for a mitigation plan, and then we  
4 would need clear wording to get us there if  
5 that's what people wanted or whether this just  
6 applies to, once they said how they're going to  
7 do the mitigation whether everything just flows  
8 from that and there's no opportunity for that  
9 review.

10 So I think we should probably take a straw  
11 for our attorney on whether people want to see  
12 that kind of process for review of the  
13 mitigation plan and then maybe we can come up  
14 with clearer wording for that.

15 PRESIDING OFFICER WEATHERSBY: So the  
16 alternatives are as Director Muzzey I think had  
17 suggested that what gets elevated is the  
18 Applicant's proposed mitigation, their plan  
19 they're putting forward to address the concerns.  
20 To avoid, right, to avoid or mitigate the harm  
21 that is proposed or actually had occurred.  
22 Obviously you can't avoid something that's  
23 already happened.

24 Alternatively, Mr. Shulock, you're

1           proposing, I am not hundred percent sure of what  
2           you're proposing.

3           MR. SHULOCK: I'm just saying that it's  
4           unclear. So I think if we agree with Director  
5           Muzzey that it's the plan that's going to be  
6           elevated to the executive review and then to the  
7           mediator, we should specify that. If it's the  
8           outcome after mitigation has been taken and  
9           failed that's elevated to that executive review  
10          and to the mediator for resolution, then we  
11          should specify that. If we want it to be both,  
12          we should specify that, but I believe that we  
13          need more clear language to get to any of those  
14          three outcomes.

15          PRESIDING OFFICER WEATHERSBY: Okay. So we  
16          have the proposal that if you don't like the  
17          mitigation proposal to address the actual or  
18          anticipated harm, you can then elevate it down  
19          this process.

20          The alternative way of looking at it is  
21          that the Applicant has to actually do the  
22          mitigation that's been proposed that the  
23          property owner is dissatisfied with, find it  
24          still insufficient to continue the process. Is

1           that a summary of your, what you're suggesting,  
2           Mr. Shulock? I'm suggesting the issue. It's  
3           not adopting it.

4           MR. SHULOCK: I see three ways that it  
5           could go. One is that it's only review of the  
6           plan, right? Or only review of the outcome of  
7           mitigation which may or may not have worked. Or  
8           this could apply to both.

9           And I think the first thing we need to  
10          decide is do we want it to apply to one or the  
11          other or both. And then I think our attorney  
12          can draft us language that clarifies that.

13          PRESIDING OFFICER WEATHERSBY: So before I  
14          lose the thought, I'm going to comment on the  
15          suggestion of having the Applicant actually do  
16          the proposal in that there's elements of that  
17          proposal that the property owner or business  
18          owner has found distasteful in some manner, and  
19          I would be hesitant to require them, mitigation  
20          to occur, to actually be implemented if that  
21          could have long-lasting impacts on that property  
22          owner or the business.

23          You know, for example, to pick on Ms. Heald  
24          again, if she didn't want a new well but that

1 was their solution, you know, they put in the  
2 well, she didn't want it to begin with. I'd  
3 question whether they could actually even have  
4 the right to do it on their property, but that's  
5 another issue.

6 So I guess I would be more in favor of what  
7 this process is is let's resolve what the plan  
8 is before it gets implemented. So to me this  
9 process is elevating the Applicant's proposed  
10 mitigation efforts to avoid or mitigate the  
11 potential or actual harm. Director Muzzey?

12 DIR. MUZZEY: I would suggest that if we do  
13 both, in cases where we're talking about  
14 potential impacts, that would cause the  
15 Applicant as well as the business or property  
16 owner to go through an endless loop of 17  
17 through 19 over and over again. I think that if  
18 17 and 19 are written in a manner to address  
19 potential impacts that language can be clarified  
20 to be addressing proposed or going through  
21 mitigation strategies. If an Applicant is  
22 unsatisfied with the outcome of those, then  
23 dispute resolution would be their option.

24 If we're also going to encourage people who

1 didn't anticipate impacts and find their  
2 properties were damaged, if we're going to  
3 encourage them to do 17 through 19 prior to  
4 going directly into dispute resolution, I  
5 suggest we need a whole new sentence that our  
6 Counsel can work on to address the fact that  
7 this is different than potential impacts.

8 MR. FITZGERALD: Madam Chair.

9 PRESIDING OFFICER WEATHERSBY: Yes, Mr.  
10 Fitzgerald.

11 MR. FITZGERALD: I would also request an  
12 opinion from Counsel on his understanding of the  
13 relationship between paragraph 17 through 21 and  
14 Exhibit 268 whether, specifically whether 21  
15 supplants 268 or whether -- because 268 has  
16 things in it such as the Application form, and  
17 procedures and so on and so on. But nothing in  
18 17 to 21 refers to 268. So I'd like to please  
19 get an opinion on how that -- I don't need it  
20 right now. I'd like that as part of our  
21 overall.

22 MR. IACOPINO: This is an easy one. I  
23 think the parties that agree to paragraph 17  
24 through 21 agree that they would present a

1 Dispute Resolution Process and they did that  
2 with Exhibit 268. So that's the relationship.

3 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

4 MS. DUPREY: I bet Attorney Iacopino has  
5 enough input and can draft something.

6 PRESIDING OFFICER WEATHERSBY: So I think  
7 there's a couple issues that we need to resolve.  
8 One is that what I'm going to call the statute  
9 of limitations here. Whether the time period in  
10 which to submit a claim should be two years,  
11 I've heard it should be perhaps three years. Do  
12 people care to comment on the time frame for  
13 filing a claim? Ms. Duprey?

14 MS. DUPREY: I would again say that this is  
15 a agreed upon process, I'm sure with some  
16 negotiation through the two parties that  
17 represent both the public as well as the  
18 Applicants. I don't want to overstep that  
19 process. And also this is supposed to be an  
20 expedited process. If people want longer, they  
21 can go to court. There's nothing stopping  
22 someone from going to court and taking advantage  
23 of the three years. And in addition, this is  
24 going to go on for years so I feel like there's

1 plenty of time for people to accommodate this.  
2 Thank you.

3 PRESIDING OFFICER WEATHERSBY: Mr. Shulock?

4 MR. SHULOCK: So I raised it but then I was  
5 persuaded by Mr. Way's comments that the  
6 triggering date is not the date of harm. It's  
7 the date that the Project becomes operational.  
8 So in most cases the step, it would match or  
9 exceed, and there would only be some cases where  
10 it didn't.

11 PRESIDING OFFICER WEATHERSBY: Director  
12 Muzzey?

13 DIR. MUZZEY: And I was only open to the  
14 idea of three years if that was necessary in  
15 order to make this agreement compatible with  
16 other existing state laws. So it's entirely a  
17 legal matter for me and whatever our attorney  
18 recommends is fine.

19 PRESIDING OFFICER WEATHERSBY: I don't  
20 think he's going to recommend a time period.

21 DIR. MUZZEY: Whatever he informs us as to  
22 whether it conflicts with other state law.

23 PRESIDING OFFICER WEATHERSBY: So I'm  
24 hearing some consensus that two years from the

1 date the line is in service is sufficient. It's  
2 been agreed upon by the Applicant and Counsel  
3 for the Public and also allows the process  
4 involving the SEC Administrator, Dispute  
5 Resolution Administrator, to resolve sooner. So  
6 I'm guessing there's some consensus for a two  
7 year? Does anyone feel different that it should  
8 be something other than a two-year date from the  
9 date of service in which to file a claim?

10 (No verbal response)

11 PRESIDING OFFICER WEATHERSBY: Okay. I  
12 think the other issue is payment for the  
13 mediator if they do go into mediation. We heard  
14 from counsel that that's usually shared in  
15 Superior Court except perhaps in domestic  
16 matters or when there's a great disparity of  
17 income. Does anyone care to comment on the cost  
18 of mediation? Mr. Fitzgerald?

19 MR. FITZGERALD: Yes. I would just assert  
20 that certainly in this case we're talking about  
21 disputes between individuals, small businesses  
22 and so on with a major corporation. I believe  
23 there is a significant inequity in resources.  
24 That being said, I think that there should be

1 some sharing that would give the small entity  
2 making the dispute, you know, make them think a  
3 little bit, do I, you know, do I want to carry  
4 on with this and give them certainly some  
5 financial concern to suggest that they don't  
6 carry on with frivolous claims.

7 PRESIDING OFFICER WEATHERSBY: So I would  
8 point out that when they get to the last step if  
9 they're following this process through the  
10 dispute resolution involving the SEC Dispute  
11 Resolution Administrator, the cost of that  
12 process are paid for out of that Dispute  
13 Resolution Fund which is funded by the  
14 Applicant.

15 What we're talking about here is that  
16 there's not a provision for who's going to pay  
17 for the mediation step where they select a  
18 mediator through the state list of mediators.  
19 That person would need to be compensated.

20 MR. FITZGERALD: Could that be a topic that  
21 could potentially go to the Dispute Resolution?  
22 In other words, if they don't agree on who's  
23 going to pay?

24 PRESIDING OFFICER WEATHERSBY: I think it

1 would be helpful if we decided, you know, with  
2 it being shared, it can be shared 75/25, whether  
3 it can be a hundred percent the Applicant who  
4 most likely would have the greater ability to  
5 pay. But should there be some obligation of the  
6 property owner or the small business owner or  
7 perhaps large business owner to pay something,  
8 have some skin in that game. Director Muzzey?

9 DIR. MUZZEY: Given that the Applicant and  
10 Counsel for the Public have agreed to these  
11 conditions, and the Applicant has agreed to fund  
12 decisions made during Dispute Resolution Fund, I  
13 feel it would be consistent and also recognize  
14 the disparity in financial resources between the  
15 two parties who may be involved to have the  
16 Applicant pay for the mediation as well.

17 PRESIDING OFFICER WEATHERSBY: Does anyone  
18 feel differently than Director Muzzey? Okay.  
19 Mr. Fitzgerald?

20 MR. FITZGERALD: I did already express a  
21 different opinion.

22 PRESIDING OFFICER WEATHERSBY: I'm sorry.  
23 Could you express it again?

24 MR. FITZGERALD: There should be some

1 sharing.

2 PRESIDING OFFICER WEATHERSBY: What would  
3 you propose?

4 MR. FITZGERALD: I don't have a specific  
5 proposal at this point. I believe there should  
6 be some, whether it's a flat dollar amount or a  
7 90/10 or whatever, but I think that there should  
8 be some reason for the aggrieved party to  
9 consider do I want to carry on with a frivolous  
10 claim.

11 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

12 MS. DUPREY: I actually agree with that. I  
13 think that the point of this process is to try  
14 to get it to an end, and if you feel like I can  
15 just keep going where there's no bracketing, at  
16 least in the last, 21, you have to have suffered  
17 actual harm as we're anticipating it now. Up  
18 until now you might not have. And so it seems  
19 to me that an interest in trying to bring these  
20 claims to a conclusion before they get to 21,  
21 that having some sharing makes sense. I would  
22 agree it shouldn't be 50/50. I think it should  
23 be something like 80/20 but just something.

24 PRESIDING OFFICER WEATHERSBY: Mr. Shulock?

1 MR. SHULOCK: Well, there may be some  
2 issues with choosing Neutrals from the Superior  
3 Court list, and one is that list is divided  
4 between paid Neutrals and volunteer Neutrals.  
5 So some people can volunteer their time. I know  
6 that for disputes that haven't reached the court  
7 level yet, sometimes those mediators will ask  
8 that it go through the court program as a  
9 prelitigation mediation through the Office of  
10 Arbitration and Mediation in which case parties  
11 have to pay a \$50 fee even to access -- I think  
12 it's still \$50 to access that program. And then  
13 whether they're using a free or paid mediator,  
14 you know, they have their charges posted. So  
15 maybe the property owner pays the \$50 fee, if  
16 it's necessary. I think that would be fair.

17 PRESIDING OFFICER WEATHERSBY: Go ahead,  
18 Mr. Schmidt.

19 MR. SCHMIDT: I think there has to be a  
20 little more buy-in on behalf of the property  
21 owner. So I share the philosophy of a cost  
22 sharing percentage-wise. 70/30, 80/20 work as  
23 well.

24 PRESIDING OFFICER WEATHERSBY: Mr. Way?

1           MR. WAY: I think I'm persuaded as well  
2           that there needs be some level of buy-in. I  
3           think as we look at some of these concerns, we  
4           want to have at least some motivation to settle  
5           this if at all possible, and we don't want to  
6           give an incentive to just to carry on just  
7           because it can to its endpoint. So I would  
8           agree that there should be some buy-in. Mr.  
9           Shulock's suggestion, that's intriguing and  
10          so -- but however we do it there's something.

11          MR. SHULOCK: If I may, I think there's  
12          probably sufficient buy-in for the property  
13          owner in that if the mediation doesn't work, the  
14          company is going to proceed and construct  
15          without that agreement. Right? So at some  
16          point the company is just going to say enough.  
17          I'm not going to try and work this out with you  
18          anymore. Right? And because it's mediation,  
19          the property owner is stuck with that.

20          So if you have an unreasonable property  
21          owner which may exist out there, and I'm not  
22          saying that people who are passionate about  
23          their property are unreasonable, I'm saying that  
24          somebody who can't take "yes" for an answer,

1 right? The Applicant can always walk away from  
2 that. So I don't know that we need to  
3 incentivize or get buy-in from the property  
4 owner on a monetary level.

5 MR. WAY: I think that's a good point.

6 PRESIDING OFFICER WEATHERSBY: Actually, I  
7 don't think the Applicant can just walk away.  
8 They have to follow through this process, and if  
9 there's dissatisfaction on one level, the  
10 property owner can elevate it to the next, and  
11 the Applicant has to participate right down to  
12 the SEC Dispute Resolution Process, the final  
13 step, the applicant applies, the property owner  
14 applicant applies and Eversource has to  
15 participate is my understanding.

16 MR. SHULOCK: I think it's true that they  
17 have to participate in the mediation in good  
18 faith. They have to go in willing and with some  
19 ideas on how they're going to settle it, but if  
20 they run into a property owner who can't take  
21 "yes" for an answer, they can say we're done  
22 mediating. We've come here in good faith and we  
23 can stop.

24 So if the property owners are motivated by

1           trying to get to an agreement that will actually  
2           work for them, you know, making some gains on it  
3           rather than just having the Applicant walk away  
4           and say okay, we can't come to agreement, we're  
5           going to do what it is we think we need to do.

6           PRESIDING OFFICER WEATHERSBY: In that case  
7           though the property owner could then use the  
8           final step in Dispute Resolution Process which  
9           the Applicant would be required to participate  
10          in and there would be a binding outcome.

11          MR. SHULOCK: Agreed.

12          PRESIDING OFFICER WEATHERSBY: If there's  
13          damage or they decide there's no damage. Ms.  
14          Duprey.

15          MS. DUPREY: I still stand by my original  
16          position that I think both parties should share  
17          in this because I think, again, we're trying to  
18          get this resolved at the earliest level that we  
19          can, and there's no incentive for a property  
20          owner not to move to mediation because it's  
21          another bite at the apple and then the Applicant  
22          has no choice. It has to go, it has to pay for  
23          it. Not only does it have to go, it has to pay  
24          for it. So I'm just a little uncomfortable with

1           that and feel like if both parties had some skin  
2           in the game that there might be more of an  
3           incentive to try to reach that resolution  
4           instead of saying you know, I think I'll take  
5           another bite of the apple. I already got this  
6           so I'll take another bite of the apple.

7           MR. FITZGERALD: Is it possible that the  
8           mediator could be empowered to make a  
9           determination on the allocation?

10          MR. SHULOCK: If I may, I don't think  
11          that's possible.

12          PRESIDING OFFICER WEATHERSBY: So I'd like  
13          to make a proposal and that is because we have  
14          heard that the mediator may be a volunteer, I  
15          don't think it's fair to say the Applicant shall  
16          pay \$500 to participate in this process. I  
17          think there should be a percentage, and I think  
18          the Applicant should pay 75 percent of all costs  
19          of mediation, the Applicant being Eversource  
20          should pay 75 percent of the cost, and the  
21          property or business owner who is going through  
22          this process should pay 25 percent. I'm  
23          throwing that out there for discussion.

24          MR. FITZGERALD: Do we have any idea of the

1 magnitude that we're talking about of costs? 75  
2 percent of \$10,000 is one thing. 75 percent of  
3 a couple thousand is -- in talking about  
4 individual property owners and their ability to  
5 pay.

6 PRESIDING OFFICER WEATHERSBY: My proposal  
7 was that the individual or small business or the  
8 affected party pays 25 percent.

9 MR. FITZGERALD: Right.

10 PRESIDING OFFICER WEATHERSBY: And then  
11 Eversource --

12 MR. FITZGERALD: Still, 25 percent of 2000  
13 is different than 25 percent of 10.

14 PRESIDING OFFICER WEATHERSBY: Typical  
15 costs for mediation perhaps? Mr. Iacopino? If  
16 you can give us a general range without pinning  
17 you down too much?

18 MR. IACOPINO: In my experience the various  
19 mediators just charge an hourly rate. They  
20 usually anticipate, for instance, in Superior  
21 Court, there's going to be a four-hour  
22 mediation, they require two hours' payment from  
23 each party in advance and then if it goes over,  
24 they bill each party an equivalent amount for

1           whatever their hourly rate is.

2           MR. FITZGERALD:   So we're possibly talking  
3           1 to \$5,000 or something like that?

4           MR. IACOPINO:   I would say if the lawyer is  
5           charging \$300 an hour, and it's an 8-hour  
6           mediation, that's \$2400.   Just to give you an  
7           example of what I would say it probably a high  
8           end when you're talking about the Superior Court  
9           mediators.

10          MR. SCHMIDT:   Isn't it true though that  
11          they could go on for at least a couple of days?  
12          Mediation session?

13          MR. IACOPINO:   Sure.   It could.   You all  
14          could limit it as well.

15          PRESIDING OFFICER WEATHERSBY:   Also an  
16          incentive if everyone's paying a percentage to  
17          work things out or to reach a decision that  
18          we're not going to work it out after several  
19          hours of attempts.   That would be another  
20          advantage of the percentage method.

21          MS. DUPREY:   I support your proposal.

22          MR. WAY:   I do as well.

23          MR. SCHMIDT:   I do as well.

24          MR. SHULOCK:   I think that cost is too high

1 for your average property owner who's put into  
2 this position just because somebody is going to  
3 step in their backyard.

4 DIR. MUZZEY: I have concerns as well for  
5 the cost for the property owner because we just  
6 don't know what that person's resources are and  
7 we don't know what the damage will be.

8 I would note that I just did a quick check  
9 in Rockingham County of the Superior Court list.  
10 There were about 40 people on the list, and 7 of  
11 those were volunteer mediators. So there does  
12 seem to be a selection of them. A number more  
13 were both noted as volunteer and paid so I don't  
14 know how they decide which they do.

15 PRESIDING OFFICER WEATHERSBY: Director  
16 Muzzey and Mr. Shulock, do you have a different  
17 proposal you'd like to float?

18 MR. SHULOCK: My proposal was a flat fee of  
19 \$50.

20 PRESIDING OFFICER WEATHERSBY: What do  
21 people think about a flat fee of \$50?

22 DIR. MUZZEY: I agree with that.

23 PRESIDING OFFICER WEATHERSBY: Mr. Schmidt?

24 MR. SCHMIDT: I like to see it a little

1 more.

2 PRESIDING OFFICER WEATHERSBY: Mr. Way?

3 MR. WAY: I'm thinking.

4 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

5 MS. DUPREY: I was talking out of school  
6 and I didn't hear the proposal.

7 PRESIDING OFFICER WEATHERSBY: The proposal  
8 is a flat fee of \$50 for the property owner and  
9 the rest paid by Eversource.

10 MS. DUPREY: I say no. I think we're  
11 blowing this all out of proportion. To me, if  
12 you had a mediator who is \$300 an hour and you  
13 had four hours which is perfectly reasonable to  
14 me for something like this, you're talking  
15 \$1200. 25 percent of that is 300. I don't  
16 think that that's too much to ask people to pay.  
17 I think it's reasonable.

18 MR. FITZGERALD: I would agree with that.

19 PRESIDING OFFICER WEATHERSBY: Agree to the  
20 \$50 or the percentage?

21 MR. FITZGERALD: To the percentage.

22 PRESIDING OFFICER WEATHERSBY: I also think  
23 \$50 is not enough. I'd be fine going 80/20.

24 MR. FITZGERALD: What about a flat fee of

1 200 or 25 percent, whichever is, I mean --

2 MS. DUPREY: Not to exceed.

3 PRESIDING OFFICER WEATHERSBY: We could do  
4 25 percent not to exceed \$500 or \$300 or  
5 something like that. It does change the  
6 incentives a little bit, once you reach that 500  
7 bucks or whatever it is, but I don't think  
8 anyone's going to drag this out necessarily.  
9 Everyone wants this done. This is not a fun  
10 process to go through, and everyone that is  
11 involved is going to try to reach agreement or  
12 resolution in some manner. So I'd be fine  
13 with -- all right. Next proposal. 75/25, cap  
14 of \$300.

15 MR. SCHMIDT: Good.

16 MS. DUPREY: Good.

17 MR. FITZGERALD: Agreed.

18 MR. WAY: Agreed.

19 PRESIDING OFFICER WEATHERSBY: Mr. Shulock  
20 is going to say no. Cap of 300.

21 MR. SHULOCK: I think that cap is too high.

22 PRESIDING OFFICER WEATHERSBY: Director  
23 Muzzey?

24 DIR. MUZZEY: I would have preferred

1 Mr. Fitzgerald's \$200 limit.

2 PRESIDING OFFICER WEATHERSBY: We have five  
3 of us that are in agreement so I think we're  
4 going to move on. Attorney Iacopino, do you  
5 need anything else?

6 MR. IACOPINO: I need to know what you're  
7 in agreement on. I missed the amount.

8 PRESIDING OFFICER WEATHERSBY: Cost of  
9 mitigation will be shared by the parties; 25  
10 percent on the property or business owners, 75  
11 percent by Eversource. The property  
12 owner/business owners contribution will be  
13 capped at \$300.

14 Do you need any more clarification from us  
15 for the Dispute Resolution Process? Do you want  
16 to think about it over lunch?

17 MR. IACOPINO: We'll do our best. We'll do  
18 our best.

19 PRESIDING OFFICER WEATHERSBY: Let's break  
20 for lunch. Off the record.

21 (Discussion off the record)

22 PRESIDING OFFICER WEATHERSBY: Let's come  
23 back at 10 minutes after 2.

24 (Recess taken at 1:23 p.m.)

C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at North Sutton, New Hampshire, this 16th day of December, 2018.

\_\_\_\_\_  
Cynthia Foster, LCR